

United States
3
Circuit Court of Appeals

For the Ninth Circuit.

UNITED STATES OF AMERICA,
Plaintiff in Error,
vs.
HERBERT H. McGOVERN,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the District of Montana.

FILED
APR 8 1924
F. D. MONCKTON,
CLERK

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Circuit Court of Appeals
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

LOY J. MOLUMBY, Esq., of Great Falls, Mon-
tana,

CHAS. DAVIDSON, Esq., of Great Falls, Mon-
tana,

J. M. GAULT, Esq., of Great Falls, Montana,
W. H. RADERMACHER, Esq., of Great Falls,
Montana,

Attorneys for Plaintiff and Defendant in
Error.

JOHN L. SLATTERY, Esq., U. S. Attorney,
RONALD HIGGINS, Esq., Asst. U. S. Attorney,
W. H. MEIGS, Esq., Asst. U. S. Attorney,
Of Helena, Montana,

LAWRENCE A. LAWLOR, Attorney for United
States Veterans Bureau,
Of Washington, D. C.,

Attorneys for Defendant and Plaintiff in
Error. [1*]

In the District Court of the United States, in and
for the District of Montana.

No. 948.

HERBERT McGOVERN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

*Page-number appearing at foot of page of original certified Tran-
script of Record.

BE IT REMEMBERED that on the 7th day of September, 1921, a summons was duly issued herein, being in the words and figures following, to wit:
[2]

UNITED STATES OF AMERICA.

District Court of the United States, District of
Montana.

HERBERT McGOVERN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Action brought in the said District Court, and the
Complaint filed in the office of the Clerk of said
District Court, in the City of Gt. Falls, County
of Cascade.

SUMMONS.

The President of the United States of America,
GREETING: To the Above-named Defendant,
the United States of America.

You are hereby summoned to answer the complaint in this action which is filed in the office of the Clerk of this court, a copy of which is herewith served upon you, and to file your answer and serve a copy thereof upon the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case your failure to appear or answer, judgment will be taken

against you by default, for the relief demanded in the complaint.

WITNESS, the Honorable GEO. M. BOURQUIN, Judge of the United States District Court, District of Montana, this 7th day of Sept. in the year of our Lord one thousand nine hundred and 21, and of our Independence the 146.

[Seal]

C. R. GARLOW,

Clerk.

By _____,

Deputy Clerk.

United States Marshal's Office,

District of Montana.

I hereby certify, that I received the within summons on the 7th day of Sep., 1921, and personally served the same on the 7th day of Sep., 1921, on John L. Slattery, U. S. District Attorney, by delivery to, and leaving with him as representing said defendant named therein personally, at Great Falls, county of Cascade, in said District, a certified copy thereof, together with a copy of the complaint, certified to by C. R. Garlow, Clerk, attached thereto.

Dated this 7th day of Sep., 1921.

JOSEPH L. ASBRIDGE,

U. S. Marshal.

By _____,

Deputy.

[Endorsed]: No. 948. U. S. District Court, District of Montana. Herbert McGovern vs. United States. Summons. L. J. Molumby, Plaintiff's Attorney. Montana. Filed Sept. 8, 1921.

C. R. Garlow, Clerk. By _____, Deputy Clerk.
[3]

Thereafter, on August 4, 1922, an amended complaint was filed herein, being in the words and figures following, to wit:

In the District Court of the United States for the
District of Montana.

HERBERT H. McGOVERN,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

AMENDED COMPLAINT.

COMES NOW the plaintiff in the above-entitled action and for his cause of action against the defendant alleges:

I.

That plaintiff has been for a period of more than three (3) years last past and still now is a resident of Cascade County, District of Montana.

II.

That on or about the nineteenth day of June, 1917, he enlisted in the naval forces of the United States of America and that down to and including the 17th day of October, 1918, he served the Government of the United States of America as a first-class machinist in its navy and was during all of said time employed in active service during the war with Germany and its allies.

III.

That on or about the 10th day of July, 1917, said Herbert H. McGovern made application for insurance under the provisions of Article IV of the War Risk Insurance Act of Congress and the rules and regulations of the War Risk Insurance [4] Bureau established by said act in the sum of Ten Thousand Dollars (\$10,000.00) and that thereafter he was duly issued a certificate by said War Risk Insurance Bureau, of his compliance with said War Risk Insurance Act so as to entitle him to the benefits of the insurance provisions of said act and of the other acts of Congress relating thereto and the rules and regulations promulgated by the War Risk Insurance Bureau or the Director thereof. And that thereafter and during his term of service under the War Department as aforesaid, there was deducted from his pay for said services, by the United States Government through its proper officers, the monthly premium upon said insurance provided for by said act and by the rules and regulations promulgated by the Bureau of War Risk Insurance and by the Director thereof.

IV.

That during the period of his service in said war with Germany and its allies as above set forth, and while acting in line of duty in such service and as a direct and proximate result of such service, the said Herbert H. McGovern suffered an impairment of mind and in addition thereto a disability which at various times has been diagnosed by different Government officials and Public Health Service of-

ficers as tuberculosis and neuro-psychosis, which said disability has continually rendered and still now does render the said plaintiff unable to follow any substantial and gainful occupation and which said disability is of such a nature that it is reasonably certain to continue throughout the lifetime of said plaintiff and said plaintiff has been ever since his discharge from the United States navy, to wit, the 17th day of October, 1918, and still now is totally and permanently disabled by reason of and as a direct result of said disability contracted in the service of the United States during the late war with Germany and its allies. [5]

V.

But after contracting said tuberculosis and neuro-psychosis, said plaintiff was confined by the Government of the United States of America, acting through its proper officers, in Government hospitals, in the neuro-psychosis ward in a sanitarium at Minneapolis, Minnesota, and in the Asbury Hospital, Minneapolis, Minnesota, and has been and still now is wholly unable to do any work of any nature whatsoever. That ever since his discharge from the United States navy the plaintiff has been and still now is subject to fainting spells or fits, a nervous condition characteristic of neuro-psychosis and shell shock cases, which have been so prevalent and which are and have been so acute that the slightest exertion or excitement brings on such a fit or fainting spell.

VI.

That plaintiff made application to the United

States Government through the Veterans' Bureau and the Director thereof and through the Bureau of War Risk Insurance and the Director thereof for the benefits of said insurance and for the monthly payments due under the said provisions of said War Risk Insurance Act for total permanent disability. That said Veterans' Bureau and the said War Risk Insurance Bureau and the directors thereof have refused to pay the plaintiff the amount provided for by the War Risk Insurance Act and have disputed the claim of the plaintiff to the benefits of the War Risk Insurance Act and have refused to grant him said benefits and have disagreed with the plaintiff concerning his rights to the insurance benefits of said War Risk Insurance Act.

VII.

That under the provisions of the War Risk Insurance Act and other acts of Congress relating thereto, plaintiff is [6] entitled to the payment of Fifty-seven and 50/100 Dollars (\$57.50) per month for each and every month transpiring since the date of his discharge from the United States Navy, and that there is now due and owing from the United States Government to the plaintiff the sum of Two Thousand Five Hundred Thirty and 00/100 Dollars (\$2,530.00).

WHEREFORE, plaintiff prays judgment against the defendant in the sum of Two Thousand Five Hundred Thirty and 00/100 Dollars (\$2,-

530.00) and for such other and further relief as to this Honorable Court may seem just.

LOY J. MOLUMBY.

Attorney for Plaintiff.

State of Montana,
County of Cascade,—ss.

Loy J. Molumby, being first duly sworn, deposes and says: That he is attorney for the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof; that the matters and things therein stated are true of his own knowledge except as to those matters therein stated on information and belief and as to such matters he believes them to be true; that the reason this verification is made by the affiant is that the plaintiff is now not a resident of Cascade County and is not now within the county wherein affiant resides and this affidavit is made.

LOY J. MOLUMBY.

Subscribed and sworn to before me this 2d day of Aug., 1922.

[Seal]

GEORGE A. JUDSON,

Notary Public in and for the State of Montana,
Residing at Great Falls, Montana.

My commission expires Apr. 1, 1923. [7]

Service of the within amended complaint was hereby admitted this 3d day of August, 1922.

W. H. MEIGS,

Assistant United States Attorney, District of Montana.

Filed Aug. 4, 1922. C. R. Garlow, Clerk. [8]

Thereafter, and on November 7, 1922, answer to amended complaint was filed herein, being in the words and figures following, to wit:

In the District Court of the United States, District
of Montana, Great Falls Division.

HERBERT McGOVERN,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

ANSWER TO AMENDED COMPLAINT.

Comes now the defendant, the United States of America, and for answer to the amended complaint of plaintiff on file herein, admits, denies, and alleges as follows:

I.

Alleges that defendant has no knowledge or information, sufficient to form a belief, as to the residence of plaintiff and therefore denies that he is a resident of Cascade County, District of Montana.

II.

Admits the allegations of paragraph II of said complaint.

III.

Answering paragraph III of said complaint, defendant admits that plaintiff made application for war risk insurance, in the sum of Ten Thousand Dollars (\$10,000.00), but alleges said application was made on the 5th day of March, 1918, and not

on the 10th day of July, 1917, as set forth in paragraph II of said complaint, and admits that a certificate was thereafter issued by the War Risk Insurance Bureau to said plaintiff, in said sum, but alleges that the insurance granted under said application and said certificate lapsed on the 31st day of [9] August, 1919, for failure by plaintiff to pay premiums thereon, as required by law, and that said insurance was, at the institution of this action, and now is, and ever since the 31st day of August, 1919, has been, in a state of lapse, void, and of no effect, by reason of the failure of plaintiff to pay the premiums thereon, as required by law.

IV.

Defendant denies the allegations and matters contained in paragraphs IV and V of said complaint.

V.

Defendant admits the allegations contained in paragraph VI of said complaint.

VI.

Defendant denies the allegations and matters contained in paragraph VII of said complaint.

VII.

Defendant denies each and every allegation, matter, and thing set forth in said complaint, not herein specifically answered, admitted, or denied.

For a further and separate defense to plaintiff's amended complaint, defendant alleges:

I.

That on the 5th day of March, 1918, plaintiff made application for insurance under the provi-

sions of Article IV of the War Risk Insurance Act of Congress, and the rules and regulations of the War Risk Insurance Bureau, established by said act, in the sum of Ten Thousand Dollars (\$10,000.00), and thereafter, a certificate of insurance, in said sum, was issued to plaintiff, by said War Risk Insurance Bureau. That [10] said insurance continued in full force and effect until the 31st day of December, 1918, when said insurance lapsed for failure on the part of plaintiff to pay the premiums thereon, as provided by law, but that said insurance was reinstated on the 1st day of March, 1919, upon application of plaintiff for reinstatement and payment, by him thereon, of back premiums and advance premiums up to, and including the month of July, 1919. That subsequently plaintiff failed to pay premium on said insurance, and under the rules and regulations of the war risk insurance, and this defendant, in such cases made and provided, said insurance lapsed on the 31st day of August, 1919, and became null and void, and of no effect, and defendant was absolved of all liability thereunder, and that said insurance, for non-payment of premiums thereon, is now and was at the institution of this action, and ever since the 31st day of August, 1919, has been, in a state of lapse, void, and of no force and effect.

II.

That said plaintiff has not become, and was not permanently and totally disabled, at any time while his said insurance was in force and effect.

WHEREFORE, defendant prays for judgment in its favor, and for the dismissal of this action, and for costs of suit.

JOHN L. SLATTERY,
United States Attorney for the District of Montana.

RONALD HIGGINS,
Assistant United States Attorney, District of Montana.

United States of America,
District of Montana,—ss.

Ronald Higgins, being first duly sworn, on oath, deposes and says: [11]

That he is a duly appointed, qualified and acting Assistant United States Attorney for the District of Montana, and attorney for defendant herein, and as such makes this verification to the foregoing answer; that he has read the same and knows the contents thereof, and that the matters and things herein stated are true to the best of his knowledge, information and belief.

RONALD HIGGINS.

Subscribed and sworn to before me this 7th day of November, 1922.

[Seal] H. H. WALKER,
Deputy Clerk, United States District Court, District of Montana.

Filed Nov. 7, 1922. C. R. Garlow, Clerk. By H. H. Walker, Deputy.

Thereafter, and on July 9, 1923, motion for judgment in favor of defendant, at conclusion of case was filed herein, being in the words and figures following, to wit: [12]

In the District Court of the United States, District of Montana, Great Falls Division.

HERBERT McGOVERN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

MOTION FOR JUDGMENT IN FAVOR OF DEFENDANT AT CONCLUSION OF CASE.

Now comes the defendant, the United States of America, at the conclusion of the above-entitled case, and moves the Court for judgment in favor of said defendant, on the following grounds:

I.

That the director of the United States Veterans Bureau has decided that plaintiff was not permanently and totally disabled on August 31, 1919, the date plaintiff's insurance lapsed, and such finding is not shown to be unreasonable by any evidence submitted at the trial of this action.

II.

That the evidence submitted in behalf of the defendant, the United States of America, at the trial, shows that there was sufficient evidence before the director of the United States Veterans

Bureau upon which the said director might reasonably find that the plaintiff was not permanently and totally disabled on or before August 31, 1919, the date upon which plaintiff's insurance lapsed for nonpayment of premiums.

III.

That all evidence submitted by the plaintiff in the trial of this action is incompetent, immaterial and irrelevant [13] for the reason that it was not shown to have previously submitted to the United States Veterans Bureau, and hence could not constitute such a disagreement as would entitle the plaintiff to bring suit under the provisions of Sec. 13 of the War Risk Insurance Act (40 Stat. 555), which is the only provision authorizing suit against the defendant, the United States of America, relative to war risk insurance matters.

IV.

That the evidence submitted by the plaintiff does not show that the plaintiff was, on or before August 31, 1919, totally disabled from following any substantially gainful occupation, in such a manner as might reasonably be expected to continuously and totally disable the plaintiff during the remainder of his lifetime.

V.

That the evidence submitted at the trial of this action does not show that the plaintiff ever was, or now is, permanently and totally disabled, within the meaning and terms of the War Risk Insurance Act, and amendments thereto, and the rules and

regulations made thereunder and by authority thereof.

VI.

That the plaintiff has failed to prove by any evidence in this case that he is entitled to judgment against the defendant upon any ground whatsoever.

RONALD HIGGINS,
Assistant United States Attorney, District of Montana.

Filed July 9, 1923. C. R. Garlow, Clerk. [14]

Thereafter, and on November 26, 1923, the decision of the Court was filed herein, said decision being set out in the bill of exceptions. [15]

Thereafter, and on December 17, 1923, judgment was duly entered herein, being in the words and figures following, to wit:

In the District Court of the United States, in and for the District of Montana, Great Falls Division.

#948.

HERBERT H. MCGOVERN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT.

This cause came on regularly to be tried on the 27th day of June, 1923, Loy J. Molumby, Charles Davidson, W. H. Radermacher, and J. M. Gault appearing as counsel for the plaintiff and Ronald Higgins, Assistant U. S. District Attorney for the District of Montana, and L. A. Lawlor, appearing as counsel for the defendant;

Said cause was tried before the Court sitting without a jury whereupon witnesses were sworn and examined on the part of the plaintiff and witnesses were sworn and examined on the part of the defendant and the evidence being closed, the cause was submitted to the Court for consideration and decision and after due deliberation thereon the Court delivered its finding and decision in writing which is filed and orders that due judgment be entered in accordance therewith;

WHEREFORE, by reason of the law and the findings aforesaid it is ORDERED AND ADJUDGED that Herbert H. McGovern, do have and recover of the United States of America, the defendant, the sum of Twenty-five Hundred and Thirty (\$2530.00); that the plaintiff herein shall pay his attorney a reasonable attorney's fee determined and allowed by the Court in amount 5% of plaintiff's recovery herein. [16]

Judgment rendered the 17th day of December, 1923.

[Seal]

C. R. GARLOW,
Clerk.

By Conrad G. Kegel,
Deputy.

Thereafter, and on January 22, 1924, petition for writ of error was filed herein, being in the words and figures following, to wit: [17]

In the District Court of the United States, District of Montana, Great Falls Division.

HERBERT H. MCGOVERN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

PETITION FOR WRIT OF ERROR.

And now comes the United States of America, defendant herein, and says:

That on the 17th day of December, 1923, the District Court entered a judgment herein in favor of the plaintiff and against the defendant, in which judgment and the proceedings had prior thereto, in this cause, certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

WHEREFORE, defendant prays that a writ of error may issue in this behalf, out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and

papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

JOHN L. SLATTERY,
United States Attorney.

N. H. MEIGS,

RONALD HIGGINS,

Assistant United States Attorneys,
Attorneys for Defendant.

Filed Jan. 22, 1924. C. R. Garlow, Clerk. [18]

Thereafter, and on January 22, 1924, assignment of errors was filed herein, being in the words and figures following, to wit:

In the District Court of the United States, District
of Montana, Great Falls Division.

HERBERT H. McGOVERN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ASSIGNMENT OF ERRORS.

The defendant in this action, in connection with its petition for writ of errors, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, makes the following assignment of errors, which it avers exist:

1. The Court erred in finding that plaintiff was permanently and totally disabled within the mean-

ing of the War Risk Insurance Act and acts supplemental thereto.

2. The Court erred in finding that plaintiff was permanently and totally disabled within the meaning and intent of the War Risk Insurance Act and Acts supplemental thereto before August 31, 1919.

3. The Court erred in finding that the plaintiff's contract of insurance, under the War Risk Insurance Act and acts supplemental thereto, did not lapse on August 31, 1919. [19]

4. The Court erred in failing to find that the plaintiff's contract of insurance under the War Risk Insurance Act and acts supplemental thereto, lapsed on August 31, 1919.

5. The Court erred in finding that plaintiff's contract of insurance, under War Risk Insurance Act and acts supplemental thereto, matured on August 31, 1919.

6. The Court erred in admitting in evidence, over objection of defendant, all exhibits of plaintiff concerning matters arising after August 31, 1919.

7. The Court erred in admitting in testimony on behalf of plaintiff, and over the objection of the defendant, concerning matters arising after August 31, 1919.

8. The Court erred in not restricting testimony on behalf of plaintiff to matters and events on and before August 31, 1919, and such that had been submitted by or on behalf of the plaintiff to the Bureau of War Risk Insurance or to the United States Veterans' Bureau.

9. The Court erred in admitting in evidence

the exhibits of plaintiff for a purpose other than to show a basis of disagreement between plaintiff and defendant.

10. The Court erred in admitting, on behalf of plaintiff and over the objection of defendant, testimony on matters never submitted to the War Risk Insurance Bureau or the United States Veterans' Bureau, and which were not and could not be the basis of disagreement.

11. The Court erred in admitting the testimony of F. L. Carey, William P. Callahan, Loy J. Molumby, Lola Beller, Dr. Dora Walker, Dr. J. C. Michael, Dr. Thomas F. Walker, Dr. C. E. K. Vidal, Herbert H. McGovern, Sr., W. S. Bentley and Herbert H. McGovern, Jr., on behalf of plaintiff and over the objection of defendant.

12. The Court erred in not finding that under the terms of the War Risk Insurance Act and acts supplemental thereto, the determination of the Bureau of War Risk Insurance and the United States Veterans' Bureau, [20] holding plaintiff not permanently and totally disabled, is final, and that such determination was not an abuse of the powers granted to the said Bureaus under said acts.

13. The Court erred in finding that, in determining the question of permanent and total disability under the War Risk Insurance Act and acts supplemental thereto, it is immaterial that plaintiff's condition is probably due more to congenital defects and hysteria incited by weak yield-

ing to desire for insurance payments, than to war service ailments.

14. The Court erred in finding that there is no reasonable probability that the plaintiff will recover from any disability or ailment he may be suffering from.

15. The Court erred in finding that an ailment or disease, even though curable, constitutes permanent and total disability of the one afflicted therewith within the meaning and intent of the War Risk Insurance Act and acts supplemental thereto, when the one so afflicted has been dispossessed thereby of any substantial earning power, and there is reasonable probability that such disability will continue for an indefinite time.

16. The Court erred in failing to find that plaintiff, if afflicted at all, was afflicted with an ailment or disease that is curable.

17. The Court erred in finding that under the War Risk Insurance Act and acts supplemental thereto, permanent and total disability has like import and determined on the same basis and by the same rules, whether or compensation or insurance.

18. The Court erred in finding that in the event of disagreement under the provisions of the War Risk Insurance Act and acts supplemental thereto, the whole matter of the insured's disability is at large and open to contention, and the Court is not restricted to a review of the bureau's judgment.

[21]

19. The Court erred in finding that the bureau,

practically from the beginning of his discharge from the Navy, has rated defendant under his contract of insurance, as permanently and totally disabled.

20. The Court erred in finding that the regulations defining permanent and total disability under the War Risk Insurance Act and acts supplemental thereto, as adopted by the Bureau of War Risk Insurance and the United States Veterans' Bureau were in excess of authority.

21. The Court erred in finding that the regulations defining permanent and total disability under the War Risk Insurance Act and acts supplemental thereto, as adopted by the Bureau of War Risk Insurance and the director thereof and the United States Veterans' Bureau and the director thereof, were repugnant to and in contravention of the meaning and intent of said acts.

22. The Court erred in failing to find that the War Risk Insurance Act and acts supplemental thereto provide for a special statutory kind of insurance and that the contracts of insurance issued under said acts are not governed by the rules and principles of law governing other kinds of insurance.

23. The Court erred in failing to find and adopt the findings of fact submitted by the defendant.

24. The Court erred in approving and adopting and making findings of fact and conclusions of law, in accordance with such submitted by plaintiff, even with the modifications made by the Court to paragraph 4 thereof.

25. The Court erred in not rendering judgment herein in favor of defendant and against plaintiff, for the reason that the plaintiff's contract of insurance had lapsed for nonpayment of premiums and had terminated before commencement of suit, and for the further reason that plaintiff was never permanently and totally disabled while his contract of insurance was in full force and effect. [22]

26. The Court erred in rendering judgment herein in favor of plaintiff and against defendant.

27. The Court erred in entering herein a judgment in favor of the plaintiff and against the defendant.

WHEREFORE, defendant prays that said judgment be reversed and said District Court be directed to enter judgment herein in favor of defendant, as prayed for in the answer of defendant, and such other and further relief as to the Court may seem proper.

JOHN L. SLATTERY,

United States Attorney for the District of Montana,

W. H. MEIGS,

RONALD HIGGINS,

Assistant United States Attorney for the District of Montana,

Attorneys for Defendant.

Filed Jan. 22, 1924. C. R. Garlow, Clerk. [23]

Therefore, and on January 25, 1924, order modifying decision and judgment was filed herein, being in the words and figures following, to wit:

United States District Court, Montana,
No. 948.

McGOVERN

vs.

U. S.

ORDER MODIFYING DECISION AND JUDG-
MENT.

Herein, and within the term, the decision and judgment are modified in that the allowance for attorneys' fees is fixed at 5% instead of 10% originally.

See Sec. 1, Act, May 20, 1918.

BOURQUIN, J.

Jan. 25, 1924.

Filed Jan. 25, 1924. C. R. Garlow, Clerk. By
H. H. Walker, Deputy. [24]

Thereafter, and on January 29, 1924, order allowing writ of error was duly filed herein, being in the words and figures following, to wit:

In the District Court of the United States, Dis-
trict of Montana, Great Falls Division.

HERBERT H. McGOVERN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER ALLOWING WRIT OF ERROR.

On this 29th day of January, 1924, the above-named defendant, appearing by its attorney, Ronald Higgins, Assistant United States Attorney for the District of Montana, and filing herein and presenting to the Court its petition praying for the allowance of a writ of error, and assignment of errors intended to be urged by defendant, and praying also that a transcript of the record and proceedings and papers, upon which the judgment herein was rendered, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that such other and further proceedings may be had, as may be proper in the premises;

Now, on consideration thereof, the Court does allow the writ of error as prayed for by defendant.

BOURQUIN,

Judge of the District Court of the United States
for the District of Montana.

Filed Jan. 29, 1924. C. R. Garlow, Clerk.

Thereafter, and on January 29, 1924, writ of error was duly filed herein, which original writ of error is hereto annexed, being in the words and figures following, to wit: [25]

In the District Court of the United States, District of Montana, Great Falls Division.

UNITED STATES OF AMERICA,

Plaintiff in Error,

vs.

HERBERT H. McGOVERN,

Defendant in Error.

WRIT OF ERROR.

The United States of America,—ss.

The President of the United States of America to the Judge of the District Court of the United States, for the District of Montana, GREETING:

Because in the record and proceedings, as also in the rendition of judgment of a cause in the said District Court before you, between Herbert H. McGovern, plaintiff, and the United States of America, defendant, a manifest error has happened, to the great damage of the said United States of America, as by its petition and assignment of errors herein appear; and, we being willing that the error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal,

distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you may have the same in the city of San Francisco, State of California, in said Circuit, within thirty (30) days from the date hereof, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done to correct that error, what of right, and according to the laws and customs of the United States, should be done. [26]

WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this 29th day of January, 1924.

[Seal] C. R. GARLOW,
Clerk of the District Court of the United States for
the District of Montana. [27]

[Endorsed]: No. 948. In the District Court of the United States, District of Montana, Great Falls Division. United States of America, Plaintiff in Error, vs. Herbert H. McGovern, Defendant in Error. Writ of Error. Filed Jan. 29, 1924. C. R. Garlow, Clerk. [28]

Thereafter, and on January 31, 1924, a citation duly issued herein on January 29, 1924, was filed, which original citation is hereto annexed and is in the words and figures following, to wit: [29]

In the District Court of the United States, District
of Montana, Great Falls Division.

UNITED STATES OF AMERICA,

Plaintiff in Error,

vs.

HERBERT H. McGOVERN,

Defendant in Error.

CITATION ON WRIT OF ERROR.

The United States of America,—ss.

To Herbert H. McGovern, Defendant in Error,
GREETING:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, State of California, in said Circuit, thirty (30) days from and after the date of this citation, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Montana, wherein the United States of America is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Dated this 29 day of January, 1924.

BOURQUIN,

Judge of the District Court of the United States for
the District of Montana. [30]

Due and legal service accepted and copy received this 30th day of January, 1924.

LOY J. MOLUMBY,

CHAS. DAVIDSON,

Attorneys for Defendant in Error. [31]

[Endorsed]: No. 948. In the District Court of the United States, District of Montana, Great Falls Division. United States of America, Plaintiff in Error, vs. Herbert H. McGovern, Defendant in Error. Citation on Writ of Error. Filed Jan. 31, 1924. C. R. Garlow, Clerk. By H. H. Walker, Deputy. [32]

Thereafter, and on January 31, 1924, acknowledgment of service of papers on writ of error was filed herein, in words and figures following, to wit:

In the District Court of the United States, District of Montana, Great Falls Division.

UNITED STATES OF AMERICA,

Plaintiff in Error,

vs.

HERBERT H. McGOVERN,

Defendant in Error.

ACKNOWLEDGMENT OF SERVICE OF PAPERS ON WRIT OF ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH JUDICIAL CIRCUIT.

Due and legal service of the petition of the above-named plaintiff in error for writ of error, to the

United States Circuit Court of Appeals for the Ninth Judicial Circuit, assignments of errors of said plaintiff in error, order allowing writ of error, citation and writ of error, and bill of exceptions of said plaintiff in error herein, praecipe for transcript of record and receipt of copies respectively thereof in the above-entitled cause, are hereby admitted this 30th day of January, 1924.

LOY J. MOLUMBY,
CHAS. DAVIDSON,
Attorneys for Defendant in Error.

Filed Jan. 31, 1924. C. R. Garlow, Clerk.

Thereafter, and on February 7, 1924, bill of exceptions was signed, settled and filed herein, being in the words and figures following, to wit: [33]

In the District Court of the United States, District of Montana, Great Falls Division.

Case No. 948.

HERBERT H. McGOVERN, Jr.,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

BILL OF EXCEPTIONS.

BE IT REMEMBERED that this cause came on regularly for trial on the 27th day of June, 1923, at Great Falls, Montana, before the Honorable

George M. Bourquin, Judge of the above-entitled court, sitting without a jury. Messrs. Loy J. Molumby, J. McPherson Gault and W. H. Radermacher appearing as counsel for plaintiff and Mr. Ronald Higgins, Assistant United States Attorney for the District of Montana and Mr. L. A. Lawlor, Attorney for the United States Veterans Bureau, Washington, D. C., appearing as counsel for the defendant.

Whereupon the following proceedings were had and the following evidence submitted:

TESTIMONY OF F. L. CAREY, FOR PLAINTIFF.

Thereupon F. L. CAREY, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. MOLUMBY.

My name is F. L. Carey. I live at 2116 First Avenue North, Great Falls. I have known the plaintiff, Herbert McGovern, for approximately six months. I have observed his physical and mental condition upon frequent visits which I made to his room. Up until the last month or six weeks I have been visiting him, I would say, on an average of three times a week; [34] sometimes there would be nearly every day in the week. Six months ago I was appointed chairman of the sick committee of the American Legion.

Q. What, if anything, have you noticed in his condition?

(Testimony of F. L. Carey.)

Mr. HIGGINC.—May it please the Court, at this time we object to this line of examination because it can only have a bearing upon plaintiff's condition during the last six months and it has not been shown that such has ever been submitted to the Bureau, and anything that this witness might testify to would not be the basis of a disagreement on the part of the Bureau and the insured; for the further reason it has not yet been established that there is an existing contract of insurance. We deny that the contract of insurance continues to exist and that it is in a state of lapse.

Mr. MOLUMBY.—The pleadings admit there is a disagreement between the Bureau and the Director of War Insurance and the plaintiff, and of course the reason I have not taken it from the date of his discharge is because that witness is not here.

The COURT.—All right, the objection will be overruled. If the evidence is not competent, the Court will give it no consideration in making up its decision.

Mr. HIGGINS.—May we take an exception?

The COURT.—It will be noted.

A. Well, upon several occasions, when calling on him he would go into a fainting spell, or a fit, I guess it would be more properly called. The fits are not all exactly the same. The beginning of them are practically the same, with one or two exceptions which I have noted. He will be carrying on a conversation very rationally, and if he is reclining or standing or sitting, it doesn't seem to make any

(Testimony of F. L. Carey.)

difference, if one of those fits is coming on, generally his eyes will cross to begin with, and then if he is in a sitting position he will start going over; he doesn't go fast; not quite as slow, however, as I demonstrated, but whichever way he is leaning when it comes on he naturally falls in that direction. After he falls, if he falls on the floor from a sitting position, sometimes he will remain quiet for a time, and as he starts coming out of them—if the Court please, I am describing two kinds of fits that he has; the first kind he doesn't say anything at all in these [35] fits—as he begins to come out of them he will straighten up on the floor, if he is on the floor, or if he is in the bed he also straightens out, and if he is in the bed as he comes out of them he stretches his arms out, his fingers are in about that shape, and his toes will straighten up, and rise up from the center of his body on his heels and his head, and then he will snap out of it and generally take up the conversation just where he left off when he went into this fit. Sometimes when he goes into these fits he does considerable talking, apparently is carrying on a conversation as a rule with two fellows that was in the engine-room with him on this sub-chaser that he was on during the war. One of the fellows that he talks of mostly is, I believe, Harry Vial, and the other fellow I think he calls "Red"; I don't recall Red's name. I have heard him issue instructions to these two men in particular and also to other men in the engine-room, whom he did not call by name that I

(Testimony of F. L. Carey.)

recall. His instructions are very comprehensive, and I imagine a marine engineer would understand them. There is a good deal about them that I do not understand myself, but they will carry on the conversation, and they generally go through about it from submarines, and whenever these G. I. cans are fired he will jump, and that will keep up, maybe sometimes it will be only once or twice and again he will jump five or six times.

Q. Explain what you mean by G. I. cans.

A. G. I. cans is a common term for a big torpedo.

Q. Where is that fired from? From the boat he is on?

A. It is fired from the stern or rear end of the boat that he was supposed to be on, and he will jump at about the interval I should judge upon which this shot is fired, and he often makes remarks to the other fellows who are supposed to be there in the engine-room with him, "We almost got that one"; and then sometimes they do get one; they will see the oil coming to the surface of the water, and then the submarine itself will come up and they can see Germans on deck, on top of the submarine; and I have heard him discuss with these other men the fact that it was a shame to sink such a lot of good machinery, to be [36] lost, no salvage, etc. And one time he was going to recommend that these two other men, this "Red" and Harry Vial, he was going to recommend them for promotion, but they evidently declined to ac-

(Testimony of F. L. Carey.)

cept, and he said, "All right, boys, I would like to see you get ahead, but if you would rather stay here with me I am tickled to death to have you." The duration of these fits vary; from my observation, when he goes into a talkative fit it lasts longer than one in which he does not talk, and as he is coming out of a talkative fit he apparently has another fainting spell for he ceases talking and then comes out after that. I would say from my observation I have seen him in fits that would last at least one hour, possibly longer; I have never timed them; some of them would only last two or three minutes. His eyes seemed to cross before he went into a fit. While he is having a fit his eyes are movable. They roll around some. I have never seen him bite his tongue. The only matter talked about during these fits, that I recall positively, was when Molumby flew to Salt Lake, the first sign of the fight; it worried McGovern considerably; he talked about that. I cannot recall positively having heard him speak of anything else. The length of my visits were varied; if he was feeling pretty well I would drop in for a few minutes and sit with him and visit a few minutes, then go, but if he was bad, I would stay longer. I mean if he was having fits right along. On one occasion I stayed practically all night with him, and the next night I went down again with Father Callaghan and we stayed that night, I think pretty well towards morning again, about two o'clock, I should judge. That first night that I was there I believe he was worse than

(Testimony of F. L. Carey.)

the second night. That one night in particular, which was the night following the day on which Mr. Cook, a disabled veterans commander, was here, he had one fit right after another, practically all the time that I was there. Evidently Mr. Cook, I understand, went down to call on him the day before and Cook reminded him of some doctor that had abused him in some hospital, and he took a fit, I believe, as soon as Cook got in the room and he didn't get over it for several days. It was just the resemblance of those two men. Instances similar to that bring on these fits, most of them excitement, or in the presence of a stranger will [37] often do it. Yesterday down at my office, he and his father and I was talking of him, and I called our secretary and treasurer in and introduced him to Mr. McGovern, that he was a little excited and in a very short time he had one of those fits; similar occasions, any excitement or some recollection, something which brings up his service in the navy, if he gets excited about it, he talks of some doctor against whom he has a real or imaginary grievance will bring them on. I cannot say that I have observed how strenuous exercise will affect him. I have never seen him take very strenuous work. He has never worked since I have known him. In my opinion he is not able to do any work.

Cross-examination by Mr. HIGGINS.

I have known plaintiff approximately six months and the only observation I have made of him has been during the past six months. I am collection

(Testimony of William P. Callaghan.)

manager for the Equity Insurance Company. I do not hold any position with the American Legion only as chairman of the sick or hospital committee.

TESTIMONY OF WILLIAM P. CALLAGHAN,
FOR PLAINTIFF.

Thereupon WILLIAM P. CALLAGHAN, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. MOLUMBY.

My name is William P. Callaghan. My home is 410 Second Avenue, Southwest. I am acquainted with the plaintiff, Herbert McGovern. I have known him about six months. I am on the sick committee with Mr. Carey. I act as chairman of the Legion. I have visited or seen Herbert McGovern once a week during these six months. I heard the testimony of Mr. Carey. I have observed, as he described, these fits that he had; I have observed Mr. McGovern going through those motions pretty much the same as Mr. Carey described them.

Mr. HIGGINS.—May it please the Court, we desire to have that answer stricken out as not responsive to the question, and we desire also permission of the Court to have a general objection made to all of this line of testimony. [38]

The COURT.—You may have it. I think it is fairly responsive; motion denied.

(Testimony of William P. Callaghan.)

Mr. HIGGINS.—May we have a general objection to this line of testimony?

The COURT.—You may.

A. I have never seen him in as bad a one as that night he has described, and I was called over there; he was very sick. I would say about the longest time I have seen him is about five minutes. When he would take one of these fits about the first thing you would notice he would move his eyes or something like that. Whenever I had been there in the room, when he would be in one of these fits, we would be quiet until he came out, and he would come out and he would stretch his arms and sometimes raise himself, it seemed like stretching himself from here up, and place his head back or kind of bracing himself with his feet, and he would, if he would faint again, he would sort of tremble, and if he did not faint again he would come out and he would take up the conversation where he had left it off and we would continue talking as if nothing had happened. I do not know that he bites his tongue. As to the bringing on of one of these fits, if there are a number of people in the room and they are strangers to him, which may excite him, or some worry that is on his mind, something that he is thinking about, that makes him nervous.

Q. Has he been, in your opinion, able to do any work during the time that you have known him?

Mr. HIGGINS.—We object as calling for an expert opinion, the witness not being qualified.

(Testimony of William P. Callaghan.)

Mr. MOLUMBY.—A conclusion that he is qualified to make.

The COURT.—Oh, I think he may state what he observed, what conclusions he would draw from it in respect to that. How much weight will be given to it or whether competent will be later determined. Let the objection be overruled and exception noted.

A. In my opinion I would consider him unable to work.

Cross-examination by Mr. HIGGINS.

I have only known McGovern for the past six months and not very well at that. I am an officer of the American Legion. [39]

TESTIMONY OF LOY J. MOLUMBY, FOR PLAINTIFF.

Thereupon LOY J. MOLUMBY, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

My name is Loy J. Molumby, Great Falls, Montana. I am a practicing attorney. If counsel does not object, I will just make the statements without questions.

Mr. HIGGINS.—May it please the Court, if Mr. Molumby's testimony is going to be along the line of Mr. Carey and Father Callaghan, we desire to register the same objection to his testimony as was registered against the testimony of Mr. Carey.

(Testimony of Loy J. Molumby.)

The COURT.—It may be noted. **OVERRULED.** If not competent, the Court will give it no consideration.

Mr. HIGGINS.—Exception.

WITNESS.—(Continuing.) I have known Herbert McGovern since some time the middle or last of October or first of November, 1920. He was brought down here by Frank McDonnell from Kalispell for physical examination. I have known him more or less intimately ever since that date and have had an opportunity of observing his condition closely, seeing him practically every day up until the last month, from last October. And having seen him every day for about a month after first meeting him, and having seen him several times while he was in Minneapolis in the hospital, for practically a year I believe, during that time it was about a year when I only saw him once or twice, I don't remember the duration of time he was in the hospital at Minneapolis, but it was during that period of time. When I first observed his condition I was attracted principally by his nervous demeanor, sort of wild look in his eye, rather might perhaps better be described as a scared look in his eye. At that time he weighed about 160 pounds, not more than 160 pounds; perhaps he might have weighed 165 at the very outside. He was sent to the Columbus Hospital, where I visited him every evening, or practically every evening, and was there about I believe two weeks. During that two weeks I observed but one fit such as [40]

(Testimony of Loy J. Molumby.)

described by Mr. Carey and Father Callaghan; that was of short duration, perhaps two or three minutes. Subsequently he was sent to Minneapolis and was there confined in the hospital; I did not see him until after he had been there three or four months; I went to Minneapolis and visited him and found that he—or while I visited him at that time he had three or four fits of a similar nature.

Mr. HIGGINS.—We object to that, and move it be stricken out as hearsay.

WITNESS.—(Continuing.) Hearsay? I noticed it. I say, while I was in his presence in the city of Minneapolis in the Asbury Hospital he had three or four fits of a similar nature as that described by Mr. Carey and Father Callaghan. Still later, after he was discharged from the hospital and placed by the Government in a shack out on Lake Minnetonka I spent three weeks with him, slept with him. He had on an average of five or six fits a day, sometimes as high as twelve or fifteen. How many he had at night after I went to sleep I can't say; he was having them frequently at night. I have observed him fall in the road where there was nobody around him, when everybody was in town, come back from Minneapolis and find him lying unconscious in the middle of the road in a fit such as described by Father Callaghan and Mr. Carey. I have been out to the neighbors and come back, during these three weeks that I was living with him, and discover him lying on the floor in

(Testimony of Loy J. Molumby.)

a similar fit. Subsequent to that three weeks I did not see him for a couple of months, probably might have been three or four months—my memory is not exact in the matter—until after he returned to Kalispell, and I again saw him, I believe, on two or three occasions. One was the occasion of the American Legion Convention up there, which is most distinctly in my mind, and he at that time was bedridden, was unable to be up, and I observed him then in a couple of fits of a similar nature. Since then he has been here, and I have seen him ever since last October on an average of—well—I have seen him daily until up about a month ago, rather two months ago, when I have seen him practically two or three times a week, and during all that time he has had on an average of from ten to twenty fits a day, that is, counting a day as twenty-four hours. The fits have been such as Mr. Carey described; and [41] such fits as I have observed, they range all the way from one minute—I have seen him in fits that lasted as long as four hours. The long fits are ones that are generally brought on by extreme excitement or exertion; for instance, if he gets out and fools around with some of the children in the yard or plays to any extent, particularly in the sun, he will have severe fits in the evening or at night, and if anything happens during the day that excites him, and matters of a controversial nature will excite him, little slights will excite him, he will get it into his head somebody has something in it for him, some of his best

(Testimony of Loy J. Molumby.)

friends; he can't keep his friends very long because any little thing that they do appeals to him as a slight and makes him believe that they want to do him some harm. When he first came down from Kalispell his father was sick and unable to take care of him; he has always had more or less confidence in me; I acted as his guardian for probably six months or a year, I can't recall exactly, as his legal guardian appointed by the Court, and was later discharged at the request of the Veterans' Bureau rather than at his request, and through my connection with him he has naturally got more or less confidence in me; and he was having some trouble with his neighbors in Kalispell, he thought they were trying to stir up trouble between he and the Veterans' Bureau, didn't seem to appreciate him, so he came down to Great Falls and since then I have taken care of him and fed him, first down at the Rainbow Hotel and later at the Savoy Hotel and finally got him at a house where can do more tinkering around and occupy his mind, if not altogether off his disability. These fits, as I have observed, have been generally brought on by a state of excitement or noise or any exertion on his part. He has no warning himself of such fits coming; they come on him, as far as he is concerned, suddenly. I can tell ahead of time that they are coming from some of his actions, more particularly when he takes certain kinds of fits, as a rule he crosses his eyes and looks at his nose and sort of rolls his eyes before he falls. I have observed him

(Testimony of Loy J. Molumby.)

in other conditions than those mentioned by Mr. Carey, and none of the things [42] mentioned by Mr. Carey has escaped my observation; I have seen him in every action that Mr. Carey described. On other occasions I have heard him sit and talk of a strait-jacket; evidently he has been placed in strait-jackets in different hospitals in which he has been, and the actions he goes through in such fits he directly simulates the straining of an individual in a strait-jacket; he will throw his neck up in the air, move it around, grits his teeth and strain on his arms and on his legs; when he is in such a fit his hands become rigid, his fingers slightly bent and his toes extended; when he snaps out of the fit, which generally lasts, that kind, from an hour to an hour and a half, he is unable to straighten his fingers out and he is in severe pain and cramped and yells for help, and in order to straighten his fingers out it has been necessary for me at times to place my knee on his elbow or the crook of his arm and use all my strength bearing down on his fingers to straighten them out. The same thing is true of his toes; I have had to put my knee on his leg and pull back on his toes with all my might to straighten his toes out. I have seen him go into these fits from a sitting position, standing up, and when he was lying in bed. I have seen him throw a fit of that kind on the street and fall on the pavement; seen him standing at the head of a stairway, have a fit in that way and fall all the way down the stairs; I have seen

(Testimony of Loy J. Molumby.)

him fall against a door and on numerous occasions injure himself, cut himself very severely and raise bumps on his head. I have seen him, on one occasion, fall and knock a tooth out of his mouth. On several occasions I have heard him speak of other things rather than those mentioned; I have heard him speak of the battle which Mr. Carey described, and he described it about as closely as I could; I have heard him speak of the doctors whom he believes have mistreated him, particularly the doctors in the Minneapolis Sanitarium, and I have heard him insist that he was not going to take dope, take any more morphine; I have heard him insist or beg not to be placed in a strait-jacket, and beg not to be whipped; and on the [43] other occasions when he has been out, I have heard him talk particularly about the captain of the boat on which he was machinist mate, I believe; he seemed to have considerable difficulty with the captain burning lights in his cabin and thus running down his batteries, and that seemed to excite him greatly, and numerous things that happened of that nature while he was in the service are recalled to him while he is in one of these fits.

Mr. HIGGINS.—We object to statement of counsel, “Numerous things are recalled to him while he was in the service,” same not being known to the witness.

The COURT.—Overruled.

WITNESS.—(Continuing.) I said “seemed to be,” such as the two matters I have mentioned,

(Testimony of Loy J. Molumby.)

this battle and the engine-room trouble with the captain. He has on other occasions spoken in an admiring way of the engine and discussed with other members of the crew how they could better the working of the engines, discussed the value of different oils they used, and matters of a similar nature, gone into in great detail in one of these fits, because they generally last an hour and a half, and during that particular hour and a half, or hour, or four hours, whichever the case may be, he seems to feel that he is back on board that ship.

Cross-examination by Mr. HIGGINS.

I am not certain that I have known McGovern since November 1, 1920. I am not certain of the date he came down here from Kalispell. It was just about a week or two prior that he was examined by Dr. Southmayd; if I remember correctly, it was the first of November or possibly the last of October, not before then. I am one of the attorneys of record for the plaintiff in this action. I am State Commander of the American Legion. The American Legion had the convention in Kalispell, Montana, I believe, in June or July, 1922, and McGovern was there at that time. He stayed up there until October of that year. I believe it was October, probably the first of October of that year. I was, at one time, appointed guardian of McGovern, because the Court of Cascade County thought he was incompetent, by incompetent, I mean insane. I was afterwards discharged.

Q. Has his condition changed so far as his

(Testimony of Loy J. Molumby.)

mental state is concerned, since [44] the day of your appointment as guardian?

A. I think it has. I think he has become worse.

Q. You think that he is more insane now than he was at that time?

A. Well, it is a form of insanity, yes.

Q. Do you think that he is now an incompetent?

A. I believe he is, absolutely. I would like to go further into that matter of guardianship, if you will allow me. The reason that I was discharged as guardian was not because his condition had improved, but he was at that time in Minneapolis and under the care of doctors there, and they believed, I think—I can't say exactly what they thought about the matter, but it is my opinion that—the discussions with the doctors there—that it would be best for his mental attitude towards things if I would be discharged, because the doctors' correspondence with his father and myself and the Red Cross here gave me the impression that McGovern had gained the impression while he was in the hospital that I was trying to steal his money and everything of that kind, and it was preying on his mind that I was his guardian rather than his father, and he felt he didn't need one. That is the reason, I presume, for my discharge. After McGovern got out of the hospital in Minneapolis, he returned to Kalispell, his home. He was in Kalispell during the summer of 1922, I believe, up until about the first of October, I am not certain about the date.

TESTIMONY OF HERBERT McGOVERN, SR.,
FOR PLAINTIFF.

Thereupon HERBERT McGOVERN, Sr., a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. MOLUMBY.

My name is H. H. McGovern, Sr. I am the father of the plaintiff in this action. The boy has, since his discharge from the army, been living more or less with me, except when he was in the hospital. I believe it was some time in November, 1918, if I am right, that I first saw him after his discharge from the navy. I believe it was in October, 1918, when he was [45] discharged. It was before the armistice was signed. I saw him within a month or so afterwards. My recollection is that he weighed about 165 or 170 pounds when he first got out.

Q. What was his general weight before he entered the navy?

Mr. HIGGINS.—We desire to object to the testimony of this witness, largely on the same ground as the objection to the testimony of the witness Carey. This has never been presented to the War Risk Insurance organization and no chance for a disagreement.

The COURT.—Very well. Proceed.

Mr. HIGGINS.—Exception.

A. Prior to his entry in the navy I think his weight was approximately 175 or 160 pounds. I

(Testimony of Herbert McGovern, Sr.)

first saw him at Portland after he got out of the navy.

Q. And what did you observe in his physical condition at that time?

A. I observed that he was generally run down,—

Mr. HIGGINS.—It may be understood we are objecting generally to this examination?

The COURT.—Yes.

Mr. HIGGINS.—And except to it.

A. —and that he had a bad cough, especially at nights I notice he had a bad cough, coughed throughout the night and that he was quite nervous. He stayed in Portland for quite a little while. I don't recall now just what length of time; he stayed at home quite a little bit then, and afterward he went back and entered the hospital. It has been a case of hospital for the past five years off and on, or when he wasn't he was at home with me or with some friends.

Q. Now, in regard to his condition as you observed it, with regard to his nervous condition, nervous fits or fainting spells, whichever they are, will you describe to the Court what you have observed in regard to these fits?

A. Any excitement, most any excitement, or any— [46]

Mr. HIGGINS.—We object to the question as being indefinite, uncertain, not specifying dates.

The COURT.—Overruled. Proceed.

Mr. HIGGINS.—Exception.

A. He is subject to those sinking spells. They

(Testimony of Herbert McGovern, Sr.)

apparently come without warning at all. He takes some very hard falls and he is liable to fall on to anything; apparently without any warning at all they come: he might often take a cup to drink, take a taste or drink of anything, and just at the time when he might open his lips he would fall down entirely, just as if shot. He remains in one of those spells from a few minutes to two or three hours. During those fits his eyes are dilated and apparently set. He rolls them around. He sometimes has several fits a day. He has done no work whatever, absolutely none, to my knowledge, since his discharge from the navy. I have tried several times to find some light work that he could do but he cannot do it. He has been having the sinking spells since he returned. He lived with me before his entry into the navy. He was in the best of health and very active. Aside from his nervous condition and this cough since his return from the navy you can notice in his *gate* when he walks there is a sort of a motion to his walk that, I cannot hardly describe it, I might say—

Q. Shuffling?

A. Yes, something of that order, and that may be discovered by anybody any time; that has occurred since.

Mr. HIGGINS.—We object to the question and move that the answer be stricken out. There is no allegation or claim that plaintiff was suffering from anything except mental disorder and tuberculosis.

(Testimony of Herbert McGovern, Sr.)

Mr. MOLUMBY.—It is just a symptom.

The COURT.—Motion denied.

Mr. HIGGINS.—Exception.

A. He has a hacking, dry cough, apparently, I would call it; he coughs quite often, several coughs in quick succession. He has coughed up blood [47] on many occasions. He sometimes has those night sweats. As far as I have observed that condition has existed since he got out of the navy.

Cross-examination by Mr. HIGGINS.

I cannot recall how long I saw my son in Portland after his discharge. That has been several years ago, five years ago, I believe, or nearly so. I couldn't tell you the exact time.

Q. He didn't have any fits, did he, when he was in Portland?

A. Well, he had these sinking spells.

Q. When you met him in Portland?

A. Yes, sir.

Q. Did you ever make an affidavit to that effect and send it in to the Bureau of War Risk Insurance?

A. I don't know that I did. I may have but I don't recall that I did. It is probably true that I did not. I may not have put it in an affidavit concerning the so-called sinking spells or what I term sinking spells, but I have written the department fully. My letters are on file there, fully describing this matter. I may not have made affidavits. I thought it was unnecessary for me, dealing with the Government, for me to get out and make any

(Testimony of Herbert McGovern, Sr.)

more than a statement as I saw it. I have tried to put the plaintiff to work; he was willing; he would do anything I told him if it was in his power. He has been very obedient to me in that respect and would do anything he could. I have tried him several times. As a last resort, the last time I attempted that I took him down to where I had a repairing mill to repair a small boiler; I thought possibly he might be able to look after that, but he had not been there, I think, more than thirty minutes until he fell over against the boiler and that is the last time that I—

Q. Do you mean to tell us, Mr. McGovern, that a son of yours, suffering from these spells, you put him to work near a hot boiler?

A. It was a little room; I could watch him and see what was going on. I thought possibly I could watch him and look after him. That was the best thing I could think of. I live at Kalispell and am in the lumber and logging [48] business. I have an automobile. My son was in Kalispell last summer, the summer of 1922. I forget what time he come away but it was last fall sometime. I believe it was October or November he left there.

Q. He drove your automobile while he was there last summer?

A. Yes, he did sometimes when there was any beside him.

Q. He never drove it alone?

A. Well, I don't think so.

Q. He was still having those spells at that time?

(Testimony of Herbert McGovern, Sr.)

A. Yes, as to the number, well that would depend, some days there might be several and other days there might not be any. I am not a doctor; I couldn't give you any information as to his lungs. He still coughs and spits up blood.

Q. He is quite a cigarette fiend, isn't he, Mr. McGovern?

A. Well, he smokes cigarettes. That is one habit he got while he was away. There was never any cigarettes smoked in my house until this came up. I presume he smokes several packages of cigarettes a day. I don't know how many he smokes, I couldn't say, but I know at one time when he was on a chaser there was word come home to me that he had been given two thousand at one time.

Q. Now, your son has been endeavoring to get insurance ever since he retired from the service, hasn't he? Shortly thereafter?

Mr. MOLUMBY.—I object to that question. Counsel has been contending that he has never made any contention for it or asked for it. It has been the basis of his objections to the testimony.

Q. I will say this, Mr. McGovern, that he has felt that he ought to have compensation or insurance? A. Yes.

Q. And it has been rather an obsession with him, hasn't it, Mr. McGovern?

A. Yes; the explanation he has given to me is this—

Q. You say that it has been?

A. I can only tell you what he said. [49]

(Testimony of Herbert McGovern, Sr.)

Q. All right, tell us.

A. He said that the soldier was to have compensation and that many of them were getting it and that he could not understand why he should not share the same as others. I think he is getting forty dollars a month.

Redirect Examination by Mr. MOLUMBY.

I don't know that I have ever personally put in any affidavits at all in regard to this case. I don't know that I have ever been asked to sign any affidavits at all. I may have, but I don't recall. Most that I done in this matter was correspondence, just by letter with the hospitality or place where he has been. I don't recall whether or not he ever put in his application for compensation or where. I do not think it was done while he was in Kalispell. It was handled by somebody else at some other place. I have never actively taken any part in handling this case, except that I have had one feeling in this matter, that I have felt, in as much as his condition is as it is that it would be a great blessing to have this thing adjudicated and settled, so that there wouldn't be that feeling about the unsettled state of it.

Q. Do you know whether or not he ever had any accidents while driving that automobile.

A. I think he did. I have understood he did.

Mr. HIGGINS.—We move it be stricken out as hearsay.

The COURT.—I think so; not of his own knowledge.

TESTIMONY OF LAWRENCE A. LAWLER,
FOR PLAINTIFF.

Thereupon LAWRENCE A. LAWLER, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. MOLUMBY.

My name is Lawrence A. Lawler. I am an attorney for the United States Veterans Bureau and am here in my official capacity. I have the original files of the records of the bureau in the case of Herbert [50] McGovern. They contain the different medical examinations given McGovern by the Government, statements made by him and ratings given him by the United States Veterans Bureau. They can be classified as insurance papers, compensation papers and vocational education, and as to doctors examinations, ratings and anything else, such evidence as he, himself, has submitted. Aside from the affidavits, Government doctors reports and ratings made by the bureau, there is correspondence. I couldn't say, offhand, whether the files contain the application made by McGovern's guardian for total permanent disability, together with two doctors statements submitted therewith.

TESTIMONY OF LOLA BELLER, FOR PLAINTIFF.

Thereupon LOLA BELLER, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. MOLUMBY.

My name is Lola Beller. My home is at Kalis-

(Testimony of Lola Beller.)

pell. I am acquainted with the plaintiff and will have known him two years this coming July. He came from a hospital in Minneapolis at that time. He lived next door to my father and mother. He was as much at our place as he was at home. I had opportunity during all of that time to observe his physical and mental condition.

Q. And will you describe to the Court just what you observed in regard to his mental condition, if anything?

Mr. HIGGINS.—We object on the ground that it is indefinite, hasn't specified the time.

Mr. MOLUMBY.—During the time she has known him.

The COURT.—Yes.

Mr. HIGGINS.—I can't tell from the question when this was.

The COURT.—She may answer—since two years ago—overruled.

Mr. HIGGINS.—I desire exception.

The COURT.—It will be noted.

Mr. HIGGINS.—I desire an objection also on the same ground as objection to the testimony of the witness Carey. [51]

The COURT.—Overruled and exception noted.

A. In regard to his condition from the first, he was very nervous, fainting spells and he seemed to have spells of his heart, excited at the least little thing. The length of the fainting spells was from just a few minutes up until hours. During these he always talked about the boys who were on the

(Testimony of Lola Beller.)

boat with him. I don't recall hearing him mention anything else. When he comes out of these fits he shakes all over and then his head will turn back and his feet and he chokes, and raises his body. He has had such similar experiences during the entire time I have known him. During this time I saw him daily. I now live in Great Falls. Have been since April. I have taken care of him here since that time. There has been no change in his condition. At times he is unable to raise his arm; at other times I find his mental condition bad; he has a cough. He coughs until he chokes and then he faints and when he comes out he is sometime better. He has coughed up blood; that was just last month. The frequency of these fainting spells is according to the mental condition and environments. The most often I have seen him have them daily, he comes right out of one and goes into another, as high as fifteen or twenty a day. I never have known him to go a day without any. In these talking fainting spells he imagines he sees some of the boys in his boat getting hurt, and then he talks about the two that were in the engine-room with him and the condition of the engine and the parts of the engine where he was at. I have heard him describing or speaking to other fellows and heard him experience a battle that he was in; seems to be telling the boys just what to do.

Cross-examination by Mr. HIGGINS.

I first saw the plaintiff on the 4th day of July, 1921, and all the things to which I have testified

(Testimony of Lola Beller.)

occurred subsequent to that time. I lived next door to him. I called Dr. Conroy over to see him several times. I couldn't tell you whether Dr. Conroy is here.

Mr. MOLUMBY.—He has been subpoenaed; he will be here, if you need him.

Mr. HIGGINS.—We sure do; I understand he was told not to come here. [52]

A. I have seen the plaintiff since I have been in Great Falls. I have been taking care of him right along. Have been practically his nurse. There has been quite a close friendship between us.

TESTIMONY OF DR. DORA WALKER, FOR PLAINTIFF.

Thereupon Dr. DORA WALKER, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. DAVIDSON.

My name is Dr. Dora Walker. I am a duly licensed and practicing physician in the city of Great Falls. I saw Herbert McGovern yesterday. I X-rayed his chest yesterday.

Q. While you were making your examination, Doctor, did anything occur by way of fainting spells or anything such as that?

Mr. HIGGINS.—We object; if this witness is being put on as an expert, there has been no qualification yet.

The COURT.—She may answer. Overruled.

(Testimony of Dr. Dora Walker.)

Mr. HIGGINS.—Exception.

A. He had one of those attacks within a minute or two after he came into the office.

Mr. HIGGINS.—We object to this line of testimony, may it please the Court, on the further ground that the matter has been submitted to the bureau and no opportunity for a difference between plaintiff and the bureau.

A. In my practice, I have had occasion to examine and study a great many patients afflicted with various diseases and afflicted with diseases of the nerves and neurosis.

Q. Will you explain to the Court—Doctor, you said he had a fainting spell—just what this fainting spell amounted to. Describe it.

Mr. HIGGINS.—Objected to. This witness has not qualified as an expert.

The COURT.—Overruled.

Mr. HIGGINS.—Exception. [53]

A. Well, when he came into the office, I led the way through the office into the X-ray room and I heard him exclaim “Oh!” and I looked around and he was already on the floor when I looked around; he was lying in a fairly comfortable position on the side and had his eyes shut, and there was no convulsion. It lasted about, I would say, less than a minute, possibly a minute and a half, not more than that, when he had a slight convulsion of the right hand, and he raised up his head and opened his eyes and said, “I am all right,” and got up and staggered several steps and followed me into the

(Testimony of Dr. Dora Walker.)

X-ray room and had no other evidence of any convulsion or fit. I then X-rayed his chest. I didn't give him a physical examination.

Q. Would you say from the appearance of the man that he appeared normal mentally?

Mr. HIGGINS.—Objected to; the witness has not been qualified as an expert.

The COURT.—Overruled.

A. I was instantly struck, when he came into the room, that this man was below normal mental calibre; he had an expression on his face that was at the same time silly and happy and his talk was rapid and very hurried; and when he came out of this convulsion his expression was the same; it was not one of a person that was perfectly normal mentally.

Q. Doctor, you have had sufficient experience, have you, to determine just what this man went through, just what he was suffering from?

Mr. HIGGINS.—We object, unless it is shown what that experience is.

The COURT.—Overruled.

Mr. HIGGINS.—Exception.

A. It was my impression that this man had a hysterical convulsion. Hysterical convulsions are merely a part of some of the symptoms of hysteria and are probably brought on by some unusual excitement, nervous strain.

Q. I will ask you, Doctor, whether or not a nervous strain, accompanied by tuberculosis might cause hysteria?

(Testimony of Dr. Dora Walker.)

Mr. HIGGINS.—We object again; the witness has not qualified as an expert.

The COURT.—Overruled. [54]

Mr. HIGGINS.—Exception.

A. It is my opinion that any toxic disease, such as tuberculosis, added to a severe mental strain would be at least an exciting cause of hysteria.

Q. And you are of the opinion, from your examination of the plaintiff yesterday, that this man was suffering from hysteria?

Mr. HIGGINS.—We object; no basis for the question.

The COURT.—Overruled.

Mr. HIGGINS.—Exception.

A. I would say so.

Cross-examination by Mr. HIGGINS.

I never saw the plaintiff before yesterday and my conclusion that I have stated here is simply made from the observation I had of him when he fell on the floor and from the observation I made of him yesterday. I didn't time it but I would say that the attack lasted from one to one minute and a half. He fell in a comfortable position on the floor. He didn't hurt himself. He exclaimed "Oh!" and then went down. He came out of it in a minute and a half. He raised his head and said, "I am all right." He had a slight convulsion of the arm, raised his head, started to get up and said, "I am all right." Nobody asked me the question whether I had sufficient opportunity to observe

(Testimony of Dr. Dora Walker.)

this man to tell whether or not he is disabled in any way.

Q. Well, it is more of a conjecture, isn't it, on your part, than a medical opinion, that he is suffering from some kind of hysteria?

A. I don't think I know just what you mean.

Q. You have not had sufficient time to observe this man; he might be faking, mightn't he?

A. I suppose he might be, but I don't think he was.

Q. If plaintiff has been practicing that for several years, he could deceive you, couldn't he?

A. I think he might. [55]

Q. And mightn't that condition be brought on by a determination on the part of plaintiff to obtain War Risk insurance and compensation and by a continued conduct and an effort to deceive people into the belief that he was disabled?

A. Well, if he was very clever I should think he might.

Redirect Examination by Mr. DAVIDSON.

It was my opinion that this attack was a hysterical convulsion; it was not simulated.

TESTIMONY OF DR. J. C. MICHAEL, FOR PLAINTIFF.

Thereupon Dr. J. C. MICHAEL, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. MOLUMBY.

My name is J. C. Michael. I am a practicing

(Testimony of Dr. J. C. Michael.)

physician and specialist in neuro-psychiatric diseases. I was not subpoenaed but requested by the Government to be here as a witness for the Government. I have had opportunity to observe Herbert McGovern. I observed his condition for approximately February, March, April and May of 1921; between four and five months. I rather think I had several opportunities during that length of time and observed him often enough to form an opinion as to what his trouble was.

Q. And will you state to the Court whether or not a fit such as he had and the nervous disorder which he gave evidence of was simulated, affected or whether real?

Mr. HIGGINS.—The question assumes something that has not yet been established by the testimony of this witness.

The COURT.—I think you better see what the Doctor observed first.

Mr. HIGGINS.—And we object also on the further ground that all the testimony that this doctor will give will be subsequent to the 31st day of August, 1919, and it has not yet been established that whatever this witness discovered in the condition of the plaintiff has been submitted to the bureau to be determined upon and be the basis of disagreement.

The COURT.—The plaintiff cannot introduce his case all at once. We will [56] hear it. If not properly material, relevant, it will be disregarded. Objection overruled and exception noted.

(Testimony of Dr. J. C. Michael.)

Q. State to the Court what you observed in regard to his condition, Doctor.

A. As I understand, the point of your question is whether the plaintiff was faking?

Q. No, disregard that question, Doctor, and state to the Court what you observed in regard to his nervous and physical condition.

Mr. HIGGINS.—We again object to this question on the same ground as previously stated.

The COURT.—Overruled.

Mr. HIGGINS.—Exception.

A. I saw Herbert McGovern the first time in December, as I recall it, in December of 1920, I was requested to see him in the capacity of attending physician and doing work in neuro-psychology for ex-service men in Minneapolis. He was at that time a patient at St. Barnabas Hospital, a hospital which was caring for a number of ex-service men. I was called to see him by his attending physician because of unusual excitement; the man acted frantically, he refused to have people around him; he seemed very unreasonable; he was under a good deal of emotional excitement. The purpose of my visit was principally to determine the further disposition. The hospital people had complained that they could not care for him because of his excited, nervous state; so I felt convinced that his condition was such that it would be better for the interests of all that he be removed to the Minneapolis Sanitarium, which at that time was under contract to care for mental cases. He was removed. At that

(Testimony of Dr. J. C. Michael.)

time I made a diagnosis of psychosis of a type undetermined—that is a term which means mental disease—but the type I was not able to decide upon because of my very brief time that I was allowed for that purpose.

Q. And afterwards you saw him on numerous occasions, did you not, Doctor

A. Yes. I didn't see Herbert McGovern until, I think it was, February 9th, with the exception of one time in the Minneapolis Sanitarium, and I was just making rounds there and I was introduced to him, but my memory isn't very clear [57] about that interview, except that I remember he answered my questions and said he was from Montana. I remembered having seen him before once upon a time. The Asbury Hospital was, about that time, this was February 9th, approximately, taken over by the United States Public Health Service and operated as a Government hospital exclusively, and we there provided what we thought very excellent accommodations for Herbert, and I saw him in the capacity of attending physician from that time on until his discharge in May, 1919; and during that time he gave evidence of a good deal of emotional excitement and of being very nervous, and was very suspicious, very suspicious that people weren't doing the right thing by him, especially the Government; very frequently he would tell me sometimes he would get out of bed and suddenly get a spell, his knees would give way. I never saw him have a fainting spell, I never saw him have a hysterical

(Testimony of Dr. J. C. Michael.)

seizure myself. I would visit with him fifteen or twenty minutes, talk to him, and examine him on other occasions and other times, just see him only two or three minutes or so.

Q. You say you never saw him in one of these spells yourself?

A. I don't recall I ever saw him in one of those spells. It was part of my duty to make recommendations to the Government. We base our opinion on all of the information that comes to our notice, not only our opinion, but the nurses' reports and house doctors. They would report from time to time the patients conduct and behavior.

Q. The question I ask you is whether you recall yourself, of your own knowledge whether or not they ever did report such fits in regard to McGovern's case?

A. I would have to ask counsel what does he mean by such fits?

Q. You have heard the testimony sinking spells.

A. Yes, sinking spells, indeed, that has been reported to me. I don't remember reports on fits as have been described by previous witnesses.

Q. Was there anything in your observation, Doctor, of his conduct or condition to lead you to believe that he was simulating or faking? [58]

A. Well that question cannot be answered categorically yes or no. I believe that he was suffering from a condition, the symptoms of which may be determined, especially in degree, by the man's own motives, either conscious or unconscious.

(Testimony of Dr. J. C. Michael.)

Q. That is true of all hysterical persons?

A. That is true of hysterical conditions and of this border-line nervousness.

Q. Hysterical, as that is known to medical science? A. Hysteria?

Q. Yes.

A. Not very pronounced in men usually; it is more pronounced in women.

Q. Men are subject to such?

A. Yes, may have; it has been more common in the army than with civilians.

Cross-examination by Mr. HIGGINS.

As I recall it, plaintiff had no legal guardian when he arrived in Minneapolis from Montana. As I understand it there was a guardian appointed for him after his arrival there. I recommended and expressed an opinion that his condition was such as not to warrant or necessitate a guardian. That was about March; that was after he had been removed from the Minneapolis Sanitarium to the Asbury Hospital; at that time I did not feel the man was mentally disturbed to such an extent that he needed a legal guardian. As to the physical condition of the plaintiff when he came there, well, objectively his nervous system did not show any signs of disease or degeneration; that is, when we look at the patient and everything we can do in examining to convince us whether there is a disease in the nervous system objectively. I didn't find any. As to his appearance, his color seemed good; he seemed fairly well nourished; he is a man

(Testimony of Dr. J. C. Michael.)

of good physique. I didn't examine him particularly with reference to the condition of his lungs, because that was done by a specialist in diseases of the lungs. From what examination I made, I never discovered any lung disorder. I never saw any blood, never saw any hemorrhage or anything like that. He was sent to Minneapolis, primarily, [59] I believe, as I recall it, for lung trouble. I don't think it was quite as soon as three days that he was delivered over to me, I am not certain, but it was a short time after his arrival.

Q. Now he could have simulated those symptoms that he exhibited there?

A. Functional nervous symptoms can be simulated; yes.

Q. And if anyone in the service who had war risk insurance and wanted to put it over on the Government, so to speak, could conduct himself in an effective manner along the lines of the plaintiff and possibly get by with it, couldn't he?

A. I think that is possible, yes. I believe there are such cases. I couldn't say that there are quite a number of such cases. While he was there he improved, we thought considerably while he was at the Asbury Hospital. Sufficiently so to be released to the custody of friends to take him out to some cottage. As to adjustment of his compensation, endeavors were made on our part to bring the matter of compensation to the attention of the War Risk Insurance Bureau at Washington.

Q. And when he learned that he was going to

(Testimony of Dr. J. C. Michael.)

get increased compensation his condition improved, didn't it? Didn't that have some effect or influence upon his mental condition?

A. I think so; I think the man was somewhat relieved by good news of compensation.

Redirect Examination by Mr. MOLUMBY.

I recommended that the guardian be discharged.

Q. Your recommendation in that regard was partially due to the fact it seemed to excite him and worry him a lot, was it not?

A. That was only one consideration, yes. As to my knowledge whether he was sent down there as a nervous or lung patient, and about Dr. Southmayd's recommendation, I think I have seen the report. My information would come from my perusal of the reports. [60]

Q. Do you remember what that report was?

A. No, not exactly. In his case, I brought the matter to the attention of the Veterans' Bureau for the purpose of getting his compensation, just like every other case. To some extent the compensation that was got resulted from the recommendations, not exactly from the recommendations, but rather from the findings that I and the other doctors made, who examined him.

Q. And if you thought he was faking you would not have made a report on which he would get compensation, would you, Doctor?

A. Well, I had not convinced myself that Herbert McGovern was faking.

(Testimony of Dr. J. C. Michael.)

Recross-examination by Mr. HIGGINS.

Q. You doctors are usually very liberal in these things, aren't you?

A. Yes, we give the insured the benefit of any doubt. I never noticed any fits or convulsions of hours of duration, not personally, no.

Q. And you say you saw some sinking spells, or how would you describe them?

A. Well, I would have Herbert stand up during examinations, and I would find him complaining that he was too weak to stand up, and such complaints, but I never saw him swoon, never saw him have any seizure, any cramps or convulsions. He would complain of distress once in a while. As to the expression used here, I never saw him throw a fit nor a convulsion. I don't know of any medical reports of any fits of hours of duration. A man could live who would have from one to fifteen fits a day, from one minute up to four hours or four hours and a half duration.

Q. What would be his condition? Would he remain well nourished or would he become enfeebled?

A. Well, if it was a fit of that duration, due to epilepsy, it would probably enfeeble him considerably, but if it is an hysterical fit it probably would not make very much difference.

Q. That would be very rare for individuals to have fits that many times a day, real fits? [61]

A. It would be rather rare, but not so rare as to be improbable.

Q. Sufficiently rare to make one cautious as to the proof of the reality of the fits?

(Testimony of Dr. J. C. Michael.)

A. Well, hysterical fits are real, very real; the question is the degree of motive that brings them on.

Redirect Examination by Mr. MOLUMBY.

I examined McGovern and saw him on an average of about five or six times per week. This was when I called at the hospital. I stayed sometimes probably only several minutes and sometimes fifteen or twenty minutes or half an hour.

Recross-examination by Mr. HIGGINS.

Q. For what period of time did this continue, Doctor?

A. This was from February to May, 1921; I think it was February 9th to May 14th, 1921.

TESTIMONY OF DR. THOMAS F. WALKER,
FOR PLAINTIFF.

Thereupon Dr. THOMAS F. WALKER, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. DAVIDSON.

My name is Thomas F. Walker. I am a physician and live at Great Falls, Montana. In the practice of my profession, I have had considerable experience with the disease known as tuberculosis. I am familiar with the general causes and results of tuberculosis. I have not made any special study of nervous diseases, particularly hysteria, any more than one ordinarily has in their medical training.

Q. Doctor, I will ask you, from your knowledge

(Testimony of Dr. Thomas F. Walker.)
of tuberculosis, whether or not the presence of tuberculosis in the patient accompanied by a nervous shock or a nervous strain might bring upon the disease a malady known as hysteria?

Mr. HIGGINS.—We object; this witness has not qualified himself to answer that question.

The COURT.—You may answer. Overruled.
[62]

Mr. HIGGINS.—Exception.

A. I think it would be a predisposing factor, yes, sir. Toxin caused by tuberculosis is injurious to the nervous system.

Q. And a combination of those toxins affecting the nervous system combined with a nervous strain or nervous shock would be sufficient to over-strain and overbalance and cause this hysteria?

A. Yes, sir, in certain individuals it might.

Q. I will ask you, Doctor, whether or not, in your opinion, the fact that a patient is told that he has tuberculosis and is sent from one hospital to another for examination and it broods upon his mind, would that be sufficient to cause hysteria?

Mr. HIGGINS.—We object; there has been no foundation laid for that question, and for the further reason that the witness has not qualified himself as an expert.

The COURT.—While the contingencies suggested by the question may not all be proven, I assume counsel will, or else the opinion would be of no value. I think the Doctor may answer. In so far as not competent it will receive no consideration.

Mr. HIGGINS.—Exception.

(Testimony of Dr. Thomas F. Walker.)

A. Well, that one thing alone probably would not, but that would be an added load to bear and give a mind which was predisposed to this condition, by nervous strain, hardship and so on, it certainly would be an added factor which might tend to overcome a balance.

Mr. HIGGINS.—Move the answer be stricken as not responsive to the question.

The COURT.—Overruled; I think it is.

The COURT.—In other words, it might be a contributing cause?

A. Yes, sir. I graduated in 1912. I didn't see the plaintiff in my office yesterday.

Cross-examination by Mr. HIGGINS. [63]

My practice is equally divided between chemistry and pathology, perhaps a third of my working time is taken up with chemistry, making analyses. I am not a tuberculosis specialist. I am not a nerve specialist. I am not a specialist in mental diseases.

Redirect Examination by Mr. DAVIDSON.

I am not engaged in general practice; I do specialize.

Q. Will you state—

Mr. HIGGINS.—We object, unless a specialist along the lines he has specialized, has a bearing on this case.

The COURT.—I don't know that it is very material, but tendency of medicine has various phases. Overruled.

Mr. HIGGINS.—Exception.

A. I specialize in pathology, chemistry along

with it, medical chemistry. I come in contact with certain phases of tuberculosis and neuro-psychosis.

Mr. MOLUMBY.—If the Court please, at this time the plaintiff would like to introduce these Government records and have them marked.

Mr. HIGGINS.—May we have an objection and exception at this time to the introduction of any of these exhibits bearing upon any feature of this case subsequent to the 31st day of August, 1919, at which time it is claimed the insurance granted plaintiff lapsed?

The COURT.—You may.

Mr. MOLUMBY.—The first exhibit—Plaintiff's Exhibit I—is a discharge from the navy.

PLAINTIFF'S EXHIBIT I.

UNITED STATES NAVAL RESERVE FORCE. HONORABLE DISCHARGE.

THIS IS TO CERTIFY, That Herbert Hugh McGovern, Jr., Machinist's Mate, First Class, this date has been discharged from the United States Naval Reserve Force,—Four—by reason of Physical Disability, incurred in line of [64] duty. Is not recommended for re-enrollment. Rating best qualified to fill. None.

Dated this 17th day of October, 1918, at Naval Hospital, Fort Lyon, Colo.

GEO. H. BARBER, U. S. N.,
Rear Admiral, Med. Corps., U. S. N.,
Commanding.

ENROLLMENT RECORD.

Scale of Marks: 0, Bad; 1, Indifferent; 1.5, Fair;
2.5 Good; 3.0, Very Good; 4.0, Excellent.

Name—Herbert Hugh McGovern. Rate, MM—1c;
Enrolled—June 19th, 1917, at Puget Sound, for 4
years;

Previous naval service— $1\frac{1}{3}$ years. Previous
Naval Reserve service — years;

Served apprenticeship —; Gun Captain certificate
—;

Certificate of graduation P. O. School —; Sea-
man Gunner —;

Trade —; Citizenship, U. S.; Ratings held dur-
ing enrollment, Mach. Mate, 2d and 1st Class;
Proficiency in rating, 3.2; Sobriety, 4.0; Obe-
dience, 4.0; Average standing for term of en-
rollment, 3.7; Special qualifications, —.

(Signed) M. H. AMES,

Lieut. Commander, Medical Corps, U.S.N.

DESCRIPTIVE LIST.

(To be taken from current enrollment record.)

Where born—Shurben, Minn.; Date—Feb. 22,
1893; Age—24 years 7 months; Height—5 feet
9 inches; Weight—158 lbs; Eyes—Brown 2;
Hair—Dk. Br.; Complexion—Ruddy; Personal
characteristics, marks, etc.—Sc. L. side neck;
Large Vac. Sc. L. arm; Many small Ses. L.
—knee; M. *etween* scapula; Very large inguinal
rings lower arches.

Is not physically qualified for re-enrollment at
date of discharge.

Note—This form will be issued on discharge by
the reservist's Commanding Officer.

Has insurance for \$10,000.00. Last charge Oct.,

1918, for \$6.60. Due and Paid on Discharge \$23.38.
[65]

(Signed) G. K. HUNT,
Lieut. Pay Corps, U. S. N.,
For J. R. SANFORD,
Comdr. P. S. U. S. N.

Mr. MOLUMBY.—Exhibit 2 is the report of the Bureau of Medicine and Surgery of the Navy Department, showing the history of his medical examinations prior to his discharge from the Navy:

PLAINTIFF'S EXHIBIT II.
UNITED STATES OF AMERICA,
NAVY DEPARTMENT.

Washington, April 6, 1922.

I HEREBY CERTIFY that the annexed is a true copy of the medical record of Herbert Hugh McGovern, Jr., former machinist's mate first class, U. S. Naval Reserve Force, on file in the Bureau of Medicine and Surgery, Navy Department.

E. R. STITT,

Chief, Bureau of Medicine and Surgery.

OFFICE OF THE SECRETARY.

I HEREBY CERTIFY that E. R. Stitt, who signed the foregoing certificate, was at the time of signing Chief of the Bureau of Medicine and Surgery, and that full faith and credit should be given his certification as such.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the Navy

Department to be affixed this eighth day of April,
one thousand nine hundred and twenty-two.

T. ROOSEVELT,
Acting Secretary.
Washington, D. C.,
P. R. & R.

Mar. 20, 1922. [66]

To: Veterans' Bureau,
Washington, D. C.

Subject: Case, C-193, 312. Herbert Hugh Mc-
Govern, Jr.

Reference: Call of

In the case of the above named the records of
this bureau show as follows:

Born: Place—Sherben, Minn. Date 2/22/93.

Enlisted: Place—Puget Sd. Wash. Date 7/19/17.

Discharged: Place—Fort Lyon, Colo. Date 10/-
22/18.

Diagnosis: TUBERCULOSIS CHRONIC PUL-
MONARY.

Origin is in the line of duty. Disability not
result of own misconduct.

6/25/18—Tuberculosis, chronic, pulmonary. Ori-
gin. Line of duty. Patient complains of cough,
which is persistent and productive; occasional
night sweats, loss of weight (10# in last 2 months)
and strength. Physical exam. shows moderate
dullness at right apex with breathing which is
almost bronchial in character, increased whispered
voice and tactile fremitus. 6/26/18—To U. S.
Naval Hospital, New London, Conn., for further
disposition and treatment. 6/26/18—Naval Hos-

pital, New London, Conn. Diagnosis—Tuberculosis, chronic, pulmonary. Origin—Line of duty, not due to his own misconduct. For past month patient has had persistent cough. Has raised considerable blood stained sputum. Some loss of weight, drenching night sweats. Physical exam. To left of sternum in $\frac{3}{4}$ th interspace moderate dullness with bronchial breathing, slight dullness in both apices. Heart normal. X-Ray of chest shows peri-bronchial thickening at hilum of right lung. Sputum negative. 6/28/18—Sputum negative. Appetite poor. Cough persistent. 7/2/18—Slight hemoptysis this A. M. Sputum negative. 7/8/18—No change since admission. Sputum negative. 7/11/18—Given 4 days leave. 7/17/18—No change in condition. Complains of general malaise and occasional night sweats. 7/22/18—Patient low in spirit. 7/25/18—Heart enlarged to left about one cm. Murmur at apex. Systolic in time. 8/1/18—Temp. chart kept for ten days shows no subnormal temp. in A. M. or evening rise. Separate dishes. Condition improved. 8/10/18—Improving in general health. 8/19/18—Slight improvement relative but general condition not such improved. Referred to Board of Survey. 8/21/18—No change in physical exam. since admission. On left side there is a gland about the size of a chestnut—consistency soft, evidently suppurating. Refused to have it incised. Incised later, however. 8/25/18—Board of Medical Survey confirms findings above, finds him unfit for service and recommends his transfer to U. S. Naval Hospital, Fort Lyon, Colo.

8/27/18—On approved recommendation Board of Medical Survey, transferred to U. S. Naval Hospital at Fort Lyon, Colo. 8/31/18—Tuberculosis, chronic, pulmonary, Line of duty. Feels good. Eats good. Sleeps poor compared with last exam. Temp. 99°. Pulse 88. Cough—some. Weight 144. Pain—Slight anterior part of chest. Sputum—none. TB. Bacilli—neg. Leucocytes 10460. Bowels—regular. Exam. shows a moderately well nourished male with fair expansion (much less over upper lobes). Right lung shows slightly impaired resonance over apex with increased whisper voice over apex, and also over bronchial root. Few dry rales over bronchial root. Left lung shows impaired [67] resonance to 3d rib with increased broncho-vesicular breathing. No rales. Heart-apex just inside nipple line, no murmurs. Throat negative. On right side of neck is small mass evidently wen. X-Ray: Right lung shows light infiltration of upper lobe and bronchial root. Left lung shows light infiltration of upper part of upper lobe and to some extent of the bronchial root. Heart negative. 10/2/18—Admitted to M. W. of A. san, Woodmen, Colo. 10/22/18—Discharged on order from Fort Lyons. 10/22/18—Discharged: Approved recommendation Board of Medical Survey.

Disabilities noted at enlistment: Defective teeth. Very large inguinal rings. Lowered arches.

ROY AIKMOR,
Chief Pharmacist, U. S. A.

E. R. STITT.

Mr. MOLUMBY.—Exhibit 3 is his application for Government insurance:

PLAINTIFF'S EXHIBIT III.

UNITED STATES OF AMERICA,
UNITED STATES VETERANS' BUREAU.

March 16, 1922.

PURSUANT to Section 882 of the Revised Statutes, I hereby certify that the annexed photostatic copy of Application For Insurance signed Herbert H. McGovern, Jr., dated March 5, 1918, Insurance No. 1 941 583, is a true copy of the original on file in this Bureau.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the United States Veterans' Bureau to be affixed, on the day and year first above written.

[Seal] C. R. FORBES,
Director of The United States Veterans' Bureau.

APPLICATION FOR INSURANCE.

1941583 010575

My full name is Herbert Hugh McGovern, Jr.

Home Address—Oak Grove, Oregon.

Date of birth—February 22, 1893. Age—25. [68]

Date of last enlistment or entry into active service
—Sept. 5th, 1917.

I hereby apply for insurance in the sum of \$10,000 payable as provided in the Act of Congress approved October 6, 1917, to myself during permanent total disability and from and after my death to the following persons in the following amounts:

Relationship to me —	Name of Beneficiary (Given) (Middle) (Last Name)	Postoffice Address	Amount of Insurance for Each Beneficiary
Father	Herbert Hugh McGovern, Sr.	Oak Grove, Oregon	\$10,000

In case any beneficiary die or become disqualified after becoming entitled to an installment but before receiving all installments, the remaining installments are to be paid to such person or persons within the permitted class of beneficiaries as may be designated in my last will and testament, or in the absence of such will, as would under the laws of my place of residence be entitled to my personal property in case of intestacy.

I authorize the necessary monthly deduction from my pay, or if insufficient, from any deposit with the United States, in payment of the premiums as they become due, unless they be otherwise paid.

If this application is for less than \$5,500 insurance, I offer it and it is to be deemed made as of the date of signature.

If this application is for less than \$4,500 insurance and in favor of wife, child, or widowed mother, I offer it and it is to be deemed made as of February 12, 1918.

If this application is for less than \$4,500 and in favor of some person or persons other than wife, child, or widowed mother, I offer it and it is to be deemed made as of (Date of signature—February 12, 1918). Strike out whichever is not wanted.

NOTE.—If in the last paragraph you strike out “Date of signature,” leaving “February 12, 1918,”

the law gives you \$25 a month for life in case of permanent total disablement occurring prior to such date and the same monthly amount to your widow, child, or widowed mother for not to exceed 240 months less payments made to you while living, but nothing to anyone else in case of your death before such date, and the insurance for the designated beneficiary other than wife, child, or widowed mother is effective only if you die on or after February 12, 1918.

If you strike out "February 12, 1918," leaving "Date of signature," a smaller insurance both against death and disability takes effect at once, but is payable in case of death to the designated beneficiary.

To whom do you wish policy sent?

(Name) HERBERT H. McGOVERN,

(Address) Oak Grove, Oregon.

Sign here: HERBERT H. McGOVERN, Jr.

M. M. 1st Cl. U. S. N. R. F.

Signed at (on board) A. S. S. C. 42 the 5th day of March, 1918. Witnessed by: J. E. CARTER.
Rank—Ensign. Commanding A. S. S. C. 42. [69]

**MONTHLY PREMIUMS FOR EACH \$1,000 OF
INSURANCE.**

(Each \$1,000 of insurance is payable in installments of \$5.75 per month of 240 months; but if the insured is totally and permanently disabled and lives longer than 240 months the payments will be continued as long as he lives and is so disabled.)

Age	Monthly premium	Age	Monthly premium
15	\$0.63	40	\$0.81
16 .....	.63	41 .....	.82
17 .....	.63	42 .....	.84
18 .....	.64	43 .....	.87
19 .....	.64	44 .....	.89
20 .....	.64	45 .....	.92
21 .....	.65	46 .....	.95
22 .....	.65	47 .....	.99
23 .....	.65	48	1.03
24 .....	.66	49	1.08
25 .....	.66	50	1.14
26 .....	.67	51	1.20
27 .....	.67	52	1.27
28 .....	.68	53	1.35
29 .....	.69	54	1.44
30 .....	.69	55	1.53
31 .....	.70	56	1.64
32 .....	.71	57	1.76
33 .....	.72	58	1.90
34 .....	.73	59	2.05
35 .....	.74	60	2.21
36 .....	.75	61	2.40
37 .....	.76	62	2.60
38 .....	.77	63	2.82
39 .....	.79	64	3.07
		65	3.35

Insurance may be applied for in favor of one or more of the following persons with sum of \$500 or a multiple thereof for each beneficiary, the aggre-

gate not exceeding the limit of \$10,000 and not less than \$1,000 upon any one life:

Husband or wife.

Child, including legitimate child; child legally adopted before April 6, 1917, or more than six months before enlistment or entrance into or employment in active service, whichever date is the later; stepchild, if a member of the insured's household; illegitimate child, but if the insured is his father, only if acknowledged by the instrument in writing signed by him, or if he has been judicially ordered or decreed to contribute to such child's support, and if such child, if born after December 31, 1917, shall have been born in the United States or in its insular possessions.

Grandchild, meaning a child, as above defined, of a child as above defined.

Parent, including father, mother, grandfather, grandmother, stepfather, and stepmother, either of the insured or his/her spouse.

Brother or sister, including of the half blood as well as of the whole blood, stepbrothers and stepsisters and brothers and sisters through adoption.

Mar. 20, 1918.

Recorded by me this date. Checkage of premium (\$6.60) will be made by me monthly from date of this application. First Checkage made Mar. 5, 1918, for \$6.60.

C. W. LITTLEFIELD,
Pay Director, U. S. N. Rtd. [70]

Mr. MOLUMBY.—Exhibit 4 is his application for compensation because of his disability, with the accompanying physician's report and affidavit:

PLAINTIFF'S EXHIBIT IV.

UNITED STATES OF AMERICA,
UNITED STATES VETERANS' BUREAU.

March 23, 1922.

PURSUANT to Section 882 of the Revised Statutes, I hereby certify that the annexed photostatic copies of Form 526, Application of Person Disabled in and Discharged from Service, signed Herbert Hugh McGovern, Jr., dated Sept. 1, 1919; Employment Statement signed Herbert H. McGovern, Jr., dated May 1, 1919; Physician's Report, Form 504; and Form 526, Application of Person Disabled in and Discharged from Service, signed Herbert Hugh McGovern, Jr., dated April 16, 1919, are true copies of the originals on file in this Bureau.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the United States Veterans' Bureau to be affixed, on the day and year first above written.

[Seal]

C. R. FORBES,

Director of the United States Veterans' Bureau.

APPLICATION OF PERSON DISABLED IN
AND DISCHARGED FROM SERVICE.

READ WITH GREAT CARE.

You must furnish the information called for in this application, and support your answers with proof called for in these instructions, as part of your claim under the act of Congress of October

6, 1917. Every question herein must be answered fully and clearly. Answers and affidavits should be written in clear, readable hand, or typewritten, and if you do not know the answer to a question, say so.

1. Forward with this application a certified copy of your certificate of discharge from the service. If at the time of your discharge or resignation you obtained from the Director of the Bureau of War Risk Insurance a certificate that you were then suffering from injury likely to result in death or disability, the original or a certified copy of such certificate of disability should be forwarded with this application as part of your claim. [71]

2. You should also inclose a report by your attending or examining physician. If you are receiving treatment in any hospital, sanitarium, or similar institution, you may submit the hospital report or record of your case, showing your physical condition, the origin, nature and extent of your disability, and the probable duration of such disability.

3. If you have a wife or children, the fact that your wife and children are living must be shown by the affidavits of two persons, who should also state whether you and your wife and children are living together or apart, and whether or not you are divorced.

4. Your marriage must be proven by a certified copy of the public or church record, or if this is not obtainable, by the affidavit of the clergyman or magistrate who officiated, or by the affidavits of

two eye-witnesses to the ceremony, or of two persons who have personal knowledge of your marriage. If either party was divorced from a former wife or husband, that fact should be shown by a verified copy of the court order or decree of divorce.

5. Ages of children must be shown by a certified copy of the public record of birth, or the church record of baptism, or if these are not obtainable, by the affidavits of two persons, giving the name of the child, the date and place of birth, and the names of both parents.

6. If claim is made on account of a stepchild, it must be shown by the affidavits of two persons whether such child is a member of the claimant's household, and if claim is made for an adopted child a certified copy of the court letters or decree of adoption must be submitted.

7. If additional compensation is claimed for a dependent parent, relationship to such parent must be shown by a certified copy of the public record of the claimant's birth, or the church record of his baptism, or, if such evidence can not be obtained, by the affidavits of two persons. Whether or not the dependent parent for whom compensation is claimed is a widow or widower should be shown by the affidavits of two persons, who must state the specific amount of annual income from each separate source, the location and value of all property, real and personal, owned by said dependent, his or her physical condition, employment and earnings, and the amount of the disabled person's average monthly contribution to the support of the de-

pendent parent. The parent claimed for should be one of the persons to make affidavit to these facts if mentally competent.

8. The affidavits of two persons required in support of your claim should be made on the blank form on the last page of this application.

All papers which you sent this bureau must bear your full name, former rank, and organization. The number C—— must also appear upon each paper.

_____,
Commissioner. [72]

PENALTY.

That whoever in any claim for family allowance, compensation, or insurance, or in any document required by this act, or by regulation made under this act, makes any statement of a material fact, knowing it to be false, shall be guilty of perjury and shall be punished by a fine of not more than \$5,000, or by imprisonment for not more than two years, or both.

1. Full name—Herbert Hugh McGovern, Jr.
2. Address—Roseberry, Idaho.
3. Under what name did you serve? Same as above. (a) Serial No. C193312.
4. Color—White. Date of Birth—Feby. 22, 1893.
Place of Birth—Shurben, Minn.
5. Make a cross (X) after branches of service you served in: General Service ——. Limited Service ——. Army ——. Navy X. Marine Corps ——. Coast Guard ——.

6. Date you last entered service—June 19, 1917.
Place of entry—Puget Sound N. Yard.
7. Rank or rating at time of discharge—Machinist Mate first class U. S. N. R. F.
8. Company and regiment or organization, vessel, or station in which or on which you last served—S. C. 42.
- 8a. State fully any other service in the military or naval forces of the United States—None.
9. Date and place of last discharge—Fort Lyons, Colo.
10. Cause of discharge—Disability incurred in line of duty.
11. Nature and extent of disability claimed—Unable to hold position.
12. Date disability began—About May, 1918.
13. Cause of disability—Foul Eng. room gas and salt water. Storage Batteries forming chloride gas.
14. When and where received—Off Coast Conn.
15. Occupations and wages before entering service—Mining Engr. \$100.00 per Mo. & Expenses.
16. Last two employers—Do not remember.
17. Occupations since discharge, dates of each, and wages received; if less than before service, why—Unable to perform any kind of services.
18. Present employer—Not employed. [73]
19. Name and address of doctor or hospital treating you—St. Luke's Hospital, Kansas City, Mo.

20. Are you confined to bed? No. Do you require constant nursing or attendance? No.
21. Name and address of nurse or attendant—Not regularly.
22. Are you willing to accept medical or surgical treatment if furnished? No.
23. Are you single, married, widowed, or divorced? Single.
24. Times married —.
25. Date and place of last marriage —.
26. Times present wife has been married —.
27. Maiden name of wife.
28. Do you live together? —.
29. Have you now living a child or children, including stepchildren and adopted children, under eighteen years of age and unmarried? No.
30. If so, state below full name of each child, and date of birth; if a stepchild or adopted child, so state, and give date child was adopted by you or became a member of your household.

Name of child.	Date of Birth			Name and address of person with whom child lives.
	Day.	Month.	Year.	
None				

31. Have you a child of any age who is insane, idiotic, or otherwise permanently helpless? No.
32. State whether your parents are living together, separated, divorced, or dead—Mother dead.
33. Give name and address of each parent living—
Father, Marion, Mont.

34. Age of mother—At death about 37. Age of father—About 55.
35. (a) Is your mother now dependent upon you for support? No.
- (b) Is your father now dependent upon you for support? No, not at present.
- (c) If so, your average monthly contribution to your mother—\$——. Your father —.
36. (a) Value of all property owned by your mother—\$——. Your father—Not known.
- (b) What is the annual income of your mother—\$—— Your father—Not known. [74]
37. Did you make an allotment of your pay? Yes.
38. If so, to whom? To Father. Amount—\$15.00.
39. Give number of any other claim filed in account of this disability, and place filed. This is only one that has had attention.
40. Did you apply for War Risk Insurance? Yes.
41. When and where? Navy Yard, New York.
42. Insurance certificate number—Can't say. Cert. not here.
43. Name of beneficiary—Herbert Hugh McGovern.

I make the foregoing statements as a part of my claim with full knowledge of the penalty provided for making a false statement as to a material fact in a claim for compensation or insurance.

HERBERT HUGH McGOVERN, Jr.

Subscribed and sworn to before me this 1st day

of Sept., 1919, by Herbert Hugh McGovern, Jr., claimant, to whom the statements herein were fully made known and explained.

ROBERT E. HAYNES,

Notary Public.

C193312.

EMPLOYMENT STATEMENT.

May 1, 1919.

State of Oregon,

County of Multnomah,—ss.

1. State your occupation and your average monthly earnings during the twelve months prior to entering the service. Mining Eng. \$100.
2. State the exact date on which you first returned to work after discharge from the service and the monthly wages or earnings received. Unable to work.
3. State the name and address of your first employer after your discharge from the service. No employer.
4. Have you stopped working in the place named above? (a) If so give the date and the reason you stopped working:
5. State the name of your present employer, the date you started working for him and your monthly wages:
6. State fully every other position and employment you have had since your [75] discharge from the service, stating date you went to work, date you stopped and monthly wages received:

7. Are you disabled for your former employment by any injury or disease received in the service: Yes. (a) If so state just how: Loss of strength and nervousness.

I hereby certify to the truth of the foregoing statements.

Dated: May 12, 1919.

Signature—HERBERT H. MCGOVERN, Jr.

Address—253 E.-39th St., Portland, Ore.

Sec. 25. That whoever in any claim for family allowance, compensation or insurance or in any document required by this Act or by regulation made under this Act, makes any statement of a material fact knowing it to be false, shall be guilty of perjury and shall be punished by a fine of not more than \$5,000, or by imprisonment for not more than two years or both. C. C. Form 539.

PHYSICIAN'S REPORT.

This blank should be filled out in ink, using pen or typewriter. Every question should be answered as fully and clearly as possible and the report should be mailed at once to the Compensation Section, Bureau of War Risk Insurance, Washington, D. C. See penalty below.

1. Name of man: H. H. McGovern.
2. His alleged rank and organization in the service: Machinist Mate 1st Class U. S. E. R. F.
3. Home address: 253 39th St., Portland, Ore.
4. Date first examined or treated by you: April 10th/19. (A) Treatment rendered: None.
5. Physical condition at that time: As a result of gas in submarine chaser was taken sick

June 10th/18—& sent to Base Hospital, New London, Conn.; (2 mos.) & then Fort Lyons, Colo. Naval Sanitarium (1 mo.) & later at Woodman Sanitarium, Woodman, Colo. (1 mo.) & treated for Chronic Pulmonary.

6. Physical condition at present: Tuberculosis. Complains of slight cough—Very little sputum and great feeling of weakness. The signs of *tubercu.*
7. Origin, nature and extent of injury or disease so far as determinable: *losis* have been revealed—but at no time have the germs been discovered. [76]
8. Do you consider that the injury or disease from which he is suffering was received in the service, or was seriously increased or accelerated to a disabling extent by the conditions and exposure incident to service? Yes.
9. State extent of his present disability: Permanent and total—Temporary total — Partial — Per cent of total — Is totally disabled.
10. Is he able to perform any part of former or any other occupation? At present time no. If so, what? —.
11. Has he a specific injury of a permanent nature? Yes. If so, describe fully. —.
12. Do you recommend operation? No. Institutional care? Yes.
13. What are chances for arrest of recovery? Uncertain.

14. For what period from the date of discharge (not from the date of first disability and not from the date of this report) is disability likely to exist? A. From the surgical viewpoint?— B. From vocational viewpoint? Unknown.

15. Is his condition yielding to treatment? No.

16. Remarks —.

(Signed by physician, whose signature is illegible.)

Graduate of —. Year —.

IMPORTANT.

“Sec. 25. That whoever in any claim for family allowance, compensation, or insurance, or in any document required by this Act or by regulation made under this Act, makes statement of a material fact knowing it to be false, shall be guilty of perjury and shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years or both.”

APPLICATION FOR PERSON DISABLED IN THE SERVICE.

READ WITH GREAT CARE.

You must furnish the information called for in this application, and support your answers with proof called for in these instructions, as part of your claim under the act of Congress of October 6, 1917. Every question herein must be answered fully and clearly. Answers and affidavits should be written in clear, readable hand, or typewritten, and if you do not know the answer to a question, say so.

1. Kindly forward with the application your certificate of discharge from the service. A copy will be made at this office and the original will be returned to you. If at the time of your discharge or resignation you [77] obtained from the Director of the Bureau of War Risk Insurance a certificate that you were then suffering from injury likely to result in death or disability, the original or a certified copy of such certificate of disability should be forwarded with this application as part of your claim.

2. You should also inclose a report by your attending or examining physician on the inclosed physician's report blank. If you are receiving treatment in any hospital, sanitarium, or similar institution, you may submit the hospital report or record of your case, showing your physical condition, the origin, nature, and extent of your disability, and the probable duration of such disability.

3. If you have a wife or children, the fact that your wife and children are living must be shown by the affidavits of two persons, who should also state whether you and your wife and children are living together or apart, and whether or not you are divorced.

4. Your marriage must be proven by a certified copy of the public or church record, or if this is not obtainable, by the affidavit of the clergyman or magistrate who officiated, or by the affidavits of two eye-witnesses to the ceremony, or of two persons who have personal knowledge of your marriage. If either party was divorced from a former wife or

husband, that fact should be shown by a verified copy of the court order or decree of divorce.

5. Ages of children must be shown by a certified copy of the public record of birth, or the church record of baptism, or if these are not obtainable, by the affidavits of two persons, giving the name of the child, the date and place of birth, and the names of both parents.

6. If claim is made on account of a stepchild, it must be shown by the affidavits of two persons whether such child is a member of the claimant's household, and if claim is made for an adopted child a certified copy of the court letters or decree of adoption must be submitted.

7. If additional compensation is claimed for a dependent parent, relationship to such parent must be shown by a certified copy of the public record of the claimant's birth, or the church record of his baptism, or if such evidence cannot be obtained by the affidavits of two persons. Whether or not the dependent parent for whom compensation is claimed is a widow or widower should be shown by the affidavits of two persons, who must also state the amount of such parent's annual income from all sources, and the specific amount of income from each separate source, the location and value of all property, real and personal, owned by said dependent, or his or her physical condition, employment and earnings, and the amount of the disabled person's average monthly contribution to the support of the dependent parent. The parent claimed for should be one of the persons to make affidavit to these facts if mentally competent.

8. The affidavits of two persons required in support of your claim should be made on the blank form on the last page of this application.

All papers which you send this bureau must bear your full name, rank and organization. The number — must also appear upon each paper.

Deputy Commissioner. [78]

PENALTY.

Sec. 25. That whoever in any claim for family allowance, compensation, or insurance, or in any document required by this act, or by regulation made under this act, makes any statement of a material fact, knowing it to be false, shall be guilty of perjury and shall be punished by a fine of not more than \$5,000, or by imprisonment for not more than two years, or both.

1. Full name: Herbert Hugh McGovern, Jr.
2. Address: 253 E. 39th St. Portland, Oregon.
3. Under what name did you serve? Herbert Hugh McGovern, Jr.
4. Color: White. Date of Birth: Feb. 22, 1893.
Place of birth: Shurben, Minn.
5. Make a cross (X) after branches of service you served in: Army —. Navy X. Marine Corps —. Coast Guard —.
6. Date you last entered service —. Place of entry —.
7. Rank or rating at time of discharge: Machinist mate first class.
8. Company and regiment or organization, vessel,

or station in which or on which you last served: S. C. 42.

- 8a. State fully any other service in the military or naval forces of the United States: None.
9. Date and place of last discharge: Oct. 17, 1918.
10. Cause of discharge: Physical disability incurred in line of duty.
11. Nature and extent of disability claimed: Total disability.
12. Date disability began: About June 17th, 1918.
13. Cause of disability: Salt water getting in storage batteries & Eng. room gas.
14. When and where received: While on duty S. C. 42.
15. Occupations and wages before entering service: Mining.
16. Last two employers: Worked for myself.
17. Occupations since discharge, dates of each, and wages received; if less than before service, why? None. Strength gone, frequent sickness.
18. Present employer: None.
19. Name and address of doctor or hospital treating you: None at present.
20. Are you confined to bed? No. Do you require constant nursing or attendance? No.
21. Name and address of nurse or attendant: None. [79]
22. Are you willing to accept medical or surgical treatment if furnished? No.

23. Are you single, married, widowed, or divorced?
Single.
24. Times married: None.
25. Date and place of last marriage: None.
26. Times present wife has been married: None.
27. Maiden name of wife:—
28. Do you live together? —
29. Have you now living a child or children, including stepchildren and adopted children, under eighteen years of age and unmarried?
None.
30. If so, state below full name of each child, and date of birth; if a stepchild or adopted child, so state, and give date child was adopted by you or became a member of your household.
31. Have you a child of any age who is insane, idiotic, or otherwise permanently helpless?
32. State whether your parents are living together, separated, divorced, or dead: Mother dead.
33. Give name and address of each parent living:
H. H. McGovern, Sr., 253 E. 39th St., Portland, Oregon.
34. Age of each parent: Father 54. Mother dead.
35. Extent either is actually dependent on you for support: Father was dependent (partial) but not dependent at present.
36. To whom did you make an allotment of your pay? Father, H. H. McGovern, Sr.
37. Amount of Allotment: \$15.
38. Give number of any other claim filed on account of this disability, and place filed:
None.

39. Did you apply for War Risk Insurance? Yes.
40. When and where? Aboard S. C. 42, Brooklyn Navy Yard, N. Y.
41. Insurance certificate number # 5232.
42. Name of beneficiary: H. H. McGovern, Sr.

I make the foregoing statements as a part of my claim with full knowledge of the penalty provided for making a false statement as to a material fact in a claim for compensation or insurance.

HERBERT HUGH McGOVERN, Jr.

Subscribed and sworn to before me this 16th day of April, 1919, by Herbert Hugh McGovern, claimant, to whom the statements herein were fully made known and explained.

MARTIN W. HAWKINS,
Notary Public for Ore.

My com. exp. Oct. 18, 1920. [80]

We, the undersigned, hereby certify that we are well acquainted with Herbert Hugh McGovern, claimant, whose name was subscribed hereto in our presence, and that we know him to be the person — herein.

MARTIN W. HAWKINS,
Portland, Ore.
MRS. J. G. GALLINGHAM,
Portland, Oregon.

Mr. MOLUMBY.—Exhibit 5 is a certified copy of the regulations passed by the Bureau of War Risk Insurance and the Director of the Veterans' Bureau. Exhibit 6 is what is termed a Brief Face, a term of the Veterans' Bureau indicating the different amounts of compensation that have been paid to him, and the different ratings that he has had:

PLAINTIFF'S EXHIBIT VI.

UNITED STATES OF AMERICA.

UNITED STATES VETERANS' BUREAU.

March 20, 1922.

PURSUANT to Section 882 of the Revised Statutes, I hereby certify that the annexed photostatic copies of Compensation Disability Brief Face of Herbert Hugh McGovern, Jr., and supplemental Compensation Disability Brief Face, are true copies of the originals on file in this Bureau.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the United States Veterans' Bureau to be affixed, on the day and year first above written.

C. R. FORBES,

Director of the United States Veterans' Bureau.

TREASURY DEPARTMENT.

BUREAU OF WAR RISK INSURANCE.

COMPENSATION DISABILITY BRIEF FACE.

Herbert Hugh McGovern, Jr. Mach. Mate 1/C

U. S. N.

(Name of person disabled.) (Rank and organization.)

Date of (Discharge.) Oct. 17, 1918.

(Resignation) [81]

(Award Temp. total.

Degree and per cent of disability

(1st Sub.

(2d Sub.

Cause of disability: Disease.

Date of disability: June 17, 1918.

	Monthly payment	Commencing date.	Ending date.
Payee No. 1—Herbert Hugh McGovern, Jr.	\$30.00	Oct. 18-18	
Address—253 E. 39th St., Portland, Org.			

Award to payee(s) No. One—submitted
Sept. 4, 1919

John S. Phelan Examiner

Award to payee(s) No. approved
9/2/1919

F. A. Emminger Reviewer

TREASURY DEPARTMENT.

BUREAU OF WAR RISK INSURANCE.

COMPENSATION DISABILITY BRIEF FACE.

Herbert Hugh McGovern, Jr.

Mach. Mate 1/c U. S. N.

(Name of person disabled.)

(Rank and organization.)

Date of (Discharge) Oct. 17, 1918.

(Resignation.)

(Award. T. T.

Degree and per cent of disability

(1st Sub.

(2d Sub.

Cause of disability Disease.

Date of disability June 17, 1918.

Payee No.	Payee Name	Monthly payment	Commencing date	Ending date
1	Mr. Herbert Hugh McGovern, Jr. Address— 253 E. 39th St., Portland, Ore.	\$30.00	10/18/18	5/31/20— 10/18/18
1	Amended Same Address— Same	12.00	6/ 1/20	11/30/20— 6/1/20—
1	— Address— Loy J. Molumby	80.00 80	12/ 1/20 10/18/18	12/1/20 5/31/20
4	—legal guard of Herbert Address— Hugh McGovern, Jr.	12 80	6/ 1/20 12/ 1/20	11/30/20 12/31/21
5	—414 Ford Bldg., Great Falls, Mont.			
[82]				
6	—Amended award Address—	8	1/ 1/22	
Award to Payee(s) No. 1 submitted 9/ 4/1919 Phelan Examiner				
Award to Payee(s) No. 1 approved 9/ 6/1919 Emminger Reviewer				
Ending date to payee(s) No. Reviewer				
Sub. award to payee(s) No. 1 submitted 6/18/1920 B. S. Nolan Examiner				
Sub. award to payee(s) No. 1 approved 6/19/1920 A. Simkins Reviewer				
Ending date to payee(s) No.				
Second Sub. award to payee(s) No. 1 submitted 2/16/21 J. Donohue Examiner				
Second Sub. award to payee(s) No. 1 approved 2/17/21 Cloggins Reviewer				
1 sub. 3/29/21 N. Efran				
1 app. 4/ 2/21 Cloggins				
1 sub. 11/15/21 F. C. Dowell Examiner				
1 app. 11/17/21 C. W. Mason				

Mr. MOLUMBY.—Exhibit 7 are photostatic copies of the ratings which have been given to him by the United States Veterans' Bureau, different ratings of his disability from the date of his discharge until the last one, I believe is dated December, 1921.

PLAINTIFF'S EXHIBIT VII.
UNITED STATES OF AMERICA.
UNITED STATES VETERANS' BUREAU.

March 17, 1922.

PURSUANT to Section 882 of the Revised Statutes, I hereby certify that the annexed photostatic copies of Rating Sheet dated Dec. 6, 1921, signed T. Foster; Rating Sheet dated Nov. 9, 1921, signed W. E. Chambey; Memorandum dated Oct. 5, 1921, signed R. A. Thornley; Rating Sheet dated Oct. 4, 1921, signed T. Foster; Rating Sheet dated Sept. 9, 1921, signed J. E. Cashin; Memorandum dated January 5, 1921, signed Haven Emerson; Memorandum dated Dec. 17, 1920, signed Haven Emerson; Memorandum dated Nov. 3, 1920, signed L. B. Rogers; Memorandum dated Oct. 30, 1920, signed L. B. Rogers; Memorandum dated June 14, 1920, signed W. C. Rucker; Memorandum dated June 10, 1920, signed W. C. Rucker; Memorandum dated June 8, 1920, signed W. C. Rucker; Memorandum dated April 9, 1920, signed W. C. Rucker; Memorandum dated Oct. 20, 1919, signed W. C. Rucker; and Memorandum dated August 21, 1919, signed W. C. Rucker, are true copies of the originals on file in this Bureau. [83]

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the United States Veterans' Bureau to be affixed, on the day and year first above written.

[Seal]

C. R. FORBES,

Director of the United States Veterans' Bureau.

UNITED STATES VETERANS' BUREAU.
 MEDICAL DIVISION.
 RATING SHEET.

Date—Dec. 6, 1921.

From Medical Division to Claims Division. M. B.
 of Review—TF/df:10.

Through: Board of Appeals.

Claimant's name: Herbert P. McGovern. C—193-
 312 N.

Address: Kalispell, Mont. Box 396.

Based upon all the evidence in the file at the present time, it is my opinion that the disability of the claimant mentioned above should be rated as:

T. B.: Temporary Total from date of discharge to Oct. 30, 1920.

Less than ten per cent from Oct. 30, 1920.

Alleged T. B.—Service connected.

N. P.: Less than ten per cent from date of discharge to May 3, 1920.

Temporary Total from May 3, 1920, to May 13, 1920.

Temporary Partial ten per cent (10%) from May 13, 1920, to Oct. 30, 1920.

Temporary Total from Oct. 31, 1920, to May 15, 1921.

Temporary Partial fifty per cent (50%) from May 15, 1921.

Held as service connected under Section 18, Public 47, 67th Congress.
 (Practically continuous hospitaliza-

tion for Constitutional Psychopathic Inferiority with a superimposed emotional instability and paranoid trend.)

COMBINED: Temporary Total from date of discharge to May 15, 1921.

Temporary Partial fifty per cent (50%) from May 15, 1921.

Constitutional Psychopathic Inferiority with superimposed emotional instability and paranoid trend and Tuberculosis chronic apparently arrested.

By T. FOSTER, M. D.,
Chairman, Board of Review.

ROBERT U. PATTERSON,

Asst. Director, in Chg. Med. Div.

APPROVED: Reg. 4 A-I-C. Feb. 1, 1922.

S. ————— (name illegible).

H. E. CHASE,
Board of Appeals. [84]

VETERANS' BUREAU.

MEDICAL DIVISION.

RATING SHEET.

Date—Nov. 9, 1921.

WEC/mg 10.

From Medical Division to Claims Division.

Through: Special Service Section.

Claimant's name: Herbert H. McGovern.

Address: Box 396, Kalispell, Montana.

Based upon all the evidence in the file at the

present time, it is my opinion that the disability of the claimant mentioned above should be rated as:

TB: No pulmonary disability established. (Chronic Bronchitis, suspected Tuberculosis.) JG.

NP: Less than ten per cent from date of separation from active service (10/17/18) to 5/3/20. Temporary total from 5/3/20 to 5/13/20. Temporary partial ten per cent (10%) from 5/13/20 to 12/9/20. Temporary total from 12/9/20 to 5/14/21. Temporary partial ten per cent (10%) from 5/14/21.

Held as acquired in service or aggravated by service in accordance with provisions of Section 18, Public No. 47.

(Constitutional Psychopathic inferiority with superimposed psychoneurosis.) JM.

Exam. 1/2/22.

ROBERT U. PATTERSON,

Assistant Director, in Charge of Medical Division.

By W. E. CHAMBEY, M. D.,
Chief SMS.

TREASURY DEPARTMENT.

BUREAU OF WAR RISK INSURANCE.

MEMORANDUM. Date—October 5, 1921.

From: Neuro-Psychiatric Branch.

To: Dr. D. O. Smith.

Subject: Herbert Hugh McGovern. C—193,312.

I am returning case to you as requested.

The N. P. rating is as follows:

Temporary partial less than 10% from date of

separation from active service, October 17, 1918, to May 3, 1920; total temporary from May 3, 1920, to May 13, 1920; temporary partial 10% from May 13, 1920, to December 9, 1920; total temporary from December 9, 1920, to May 14, 1921; temporary partial 10% from May 14, 1921; Constitutional Psychopathic Inferiority with superimposed emotional Instability and paranoid trend.

Held as acquired in service or aggravated by service in accordance with provisions of Section 18, Public No. 47.

RAT. td:10.

R. A. THORNLEY,
Chief N. P. Branch. [85]

RATING SHEET.

Date—October 4, 1921.

DOS-mf-10—Medical Board of Review.

From Medical Division to Compensation and Claims
Division.

Through: Board of Appeals.

Claimant's name: Herbert McGovern.

Address: Kalispell, Montana. C—193,312.

Based upon all the evidence in the file at the present time, it is my opinion that the disability of the claimant mentioned above should be rated as:
NOT Permanent Total under Reg. 4, B. IV, (b).

Temporary Total from date of discharge to September 2, 1920;

50% Temporary Partial from September 3, 1920, to November 12, 1920;

Temporary Total from November 13, 1920, during hospitalization, to May 15, 1921;

50% Temporary Partial from May 16, 1921.

Chronic Bronchitis; alleged pulmonary tuberculosis, (not shown to exist); constitutional psychopathic inferiority. Service connected. Competent.

T. FOSTER,
Chairman.

APPROVED: Oct. 5, 1921.

S ————— (name illegible).

H. E. CHASE,
Board of Appeals.

RATING SHEET.

Date—September 9, 1921.

JEC/ew:10—T. B.

From Medical Division to Compensation and Claims
Division.

Through:

Claimant's name: Herbert H. McGovern.

Address: Kalispell, Montana. C—193,312.

Based upon all the evidence in the file at the present time, it is my opinion that the disability of the claimant mentioned above should be rated as:

N. P.: Disability not connected with the service. This case does not fall under provisions of Section 18, Public No. 47. There is no N. P. disability as provided in that Section, within two years from date of discharge. (Constitutional Psychopathic Inferiority without Psychosis). [86]

T. B.: Temporary Total from discharge to Oct. 29, 1920.

Less than ten per cent disabled from October 30, 1920.

Service connected. (Pulmonary Tuberculosis).

ROBERT U. PATTERSON,

Medical Adviser.

By J. E. CASHIN, M. D.

TREASURY DEPARTMENT.

BUREAU OF WAR RISK INSURANCE.

MEDICAL DIVISION.

Date—Jan. 5, 1921.

ELR/el-10 Unit 8.

MEMORANDUM.

From: Medical Division.

To: Compensation and Insurance Claims Division.

Subject: Herbert H. McGovern. C—193,312.

Mach. Mate 1/C S. C. 42 U. S. N. R. F.

From the medical evidence presented in the file, it is my opinion that the disability of the claimant mentioned above should be rated as:

“Based on all the evidence in the file, the Surgical Rating is as follows:” TEMPORARY TOTAL From November 28th, 1920. Contracted in Service. Claimant still in hospital.

HAVEN EMERSON,

Assistant Director in Charge of Medical Division.

By E. L. ROBERTSON.

TREASURY DEPARTMENT.
BUREAU OF WAR RISK INSURANCE.
MEDICAL DIVISION.

Date—Dec. 17, 1920.

ELR/EB: 10

Med. unit 8

MEMORANDUM.

From: Medical Division.

To: Compensation and Insurance Claims Division.

Subject: Herbert McGovern. C—193312. [87]

From the medical evidence presented in the file, it is my opinion that the disability of the claimant above mentioned should be rated as:

No disability.

HAVEN EMERSON,

Medical Advisor.

By E. L. ROBERTSON.

TREASURY DEPARTMENT.
BUREAU OF WAR RISK INSURANCE.
MEDICAL DIVISION.

Date—Nov. 3, 1920.

EKH/orn/ecc:10-NP. S.

MEMORANDUM.

From: Medical Division.

To: Compensation and Insurance Claims Division.

Subject: Herbert McGovern. C—193,312.

From the medical evidence presented in the file, it is my opinion that the disability of the claimant above mentioned should be rated as:

NP.: Less than 10% (no percent) due to service.

L. B. ROGERS,
Acting Chief Medical Advisor.
By EARL K. HOLT,
Assistant Medical Advisor.

TREASURY DEPARTMENT.

BUREAU OF WAR RISK INSURANCE.

Date—Oct. 30, 1920.

MEMORANDUM.

From: Medical Division.

To: C. & I. Claims Division.

Subject: Herbert H. McGovern. C—193,312.

T. B. disability less than ten per cent (10%) from
Sept. 2, 1920.

L. B. ROGERS,
Acting Assistant Director, in Charge Medical Division.

J. GIRDWOOD.

JG/b/10. [88]

TREASURY DEPARTMENT.

BUREAU OF WAR RISK INSURANCE.

MEDICAL DIVISION.

Date—June 14, 1920.

GBH-eig-met-10.

MEMORANDUM.

From: Medical Division.

To: Compensation and Insurance Claims Division.

Subject: Herbert H. McGovern. C—193312.

From the medical evidence presented in the file, it is my opinion that the disability of the claimant mentioned above should be rated as:

From all medical evidence in file, the N. P. disability is: TEMPORARY TOTAL from May 3, 1920, to May 13, 1920. TEMPORARY PARTIAL 16% (fifteen) from May 13th. Mental condition not contracted in or aggravated by service.

W. C. RUCKER,
Chief Medical Advisor.
By G. B. HAMILTON,
Assistant Medical Advisor.

TREASURY DEPARTMENT.

BUREAU OF WAR RISK INSURANCE.

Date—June 10, 1920.

MEMORANDUM.

From: Medical Division. Tuberculosis Section.
To: Compensation & Insurance Claims Division.
Subject: Herbert H. McGovern. C—193312.

U. S. N. R.

From the medical evidence presented in the file, it is my opinion that the disability of the claimant mentioned above should be rated as:

Temporary Total continued.

W. C. RUCKER,
Chief Medical Advisor.
By G. E. MARCHANT,
Assistant Medical Advisor.

GEM/erm.

Med. Form 1750.

(Revised 4-7-20.) [89]

TREASURY DEPARTMENT.

BUREAU OF WAR RISK INSURANCE.

Date—June 8, 1920.

MC/ecc/10-ccc.

MEMORANDUM.

From: N-P Section.

To: T. B. Section.

Subject: Herbert McGovern, C—193312.

Referred on account of Tuberculosis.

N-P Temporary Total from May 3, 1920, to May 13, 1920, from May 13, 1920, Temporary Partial 15% (fifteen). Service connection not shown.

W. C. RUCKER,

Chief Medical Advisor.

Per M. COOLE.

TREASURY DEPARTMENT.

BUREAU OF WAR RISK INSURANCE.

Date—April 9, 1920

MEMORANDUM.

From: Medical Division. Tuberculosis Section.

To: Compensation and Insurance Claims Division.

Subject: Herbert H. McGovern. C—193312.

Mach. Mate 1/c.

From the medical evidence presented in the file and otherwise, it is my opinion that disability of the claimant mentioned above should be rated as: Temporary total confirmed and continued.

Monthly hospital report.

W. C. RUCKER,
Chief Medical Advisor.

By G. E. MARCHANT,
Assistant Medical Advisor.

GEM/ms 10.

Med. Form 1750.

(Revised 9-27-19.) [90]

TREASURY DEPARTMENT.

BUREAU OF WAR RISK INSURANCE.

Date Oct. 20, 1919.

MEMORANDUM.

From: Medical Division.

To: Compensation & Insurance Claims Division.

Subject: Herbert H. McGovern. C—193312.

From the medical evidence presented in the file and otherwise, it is my opinion that disability of the claimant mentioned above should be rated as: **TEMPORARY TOTAL** from date of discharged confirmed.

Re-examination in January.

W. C. RUCKER,
Chief Medical Advisor.

By GROVER A. KEMPF,
Assistant Medical Advisor.

Per MRS.

MRS/wjm 10.

Med. Form 1750.

(Revised 9-27-19.)

TREASURY DEPARTMENT.
BUREAU OF WAR RISK INSURANCE.

Date—August 21st, 1919.

MEMORANDUM.

From: Medical Division.

To: Compensation & Insurance Claims Division.

Subject: Herbert H. McGovern, Jr. C—193312.

From the medical evidence presented in the file and otherwise, it is my opinion that the disability of the claimant mentioned above should be rated as: Temporary Total FROM DATE OF DISCHARGE.

Re-examination at once.

W. C. RUCKER,

Chief Medical Advisor.

By J. CLINTON FOLTZ,

Assistant Medical Advisor.

HCC:IR 10.

H. C. C.

Med. Form 1750. [91]

Mr. MOLUMBY.—Exhibit 8 is a photostatic copy of a medical report of Dr. A. W. Morrison and one of Dr. D. S. Babtkis and Dr. W. S. Broker and Dr. Julius Johnson:

PLAINTIFF'S EXHIBIT VIII.

UNITED STATES OF AMERICA.

UNITED STATES VETERANS' BUREAU.

March 20, 1922.

PURSUANT to Section 882 of the Revised Statutes, I hereby certify that the annexed photostatic copies of Medical Report signed A. W. Morrison, M. D., dated 11/12/21; Medical Report dated Nov.

8, 1921, signed D. S. Babtkis; Report dated Nov. 7, 1921, signed W. S. Broker; and Medical Report signed Julius Johnson, M. D., dated November 10, 1921, are true copies of the originals on file in this Bureau.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the United States Veterans' Bureau to be affixed on the day and year first above written.

[Seal]

C. R. FORBES,
Director of the United States Veterans' Bureau.

THE NICOLLET CLINIC.

MINNEAPOLIS, MINN.

November twelfth, 1921.

DIVISION OF NEUROLOGY.

A. W. Morrison, M. D.

To: United States Veterans' Bureau,
Keith-Plaza Bldg.,

Minneapolis, Minn.

From: Dr. A. W. Morrison,

1009 Nicollet Avenue,

Minneapolis, Minn.

Subject: H. H. McGovern.

The above patient was sent to me for examination by Dr. J. C. Michael stating that the U. S. V. B. requested a neurological examination by someone other than one of their staff. [92]

Patient states that he is a mining engineer by profession. Always normal in his past life previous to enlisting in the Navy. Fond of athletics and enjoyed the things which other boys enjoy. He

was in the Navy for one year. Has no complaints to offer regarding treatment received while in service. He was on a submarine chaser in charge of the engine-room when considerable water was shipped which got into the sulphuric acid in the batteries and he inhaled the gas which closely resembled chlorine. This was in May, 1918. At this time he was extremely tired, having been on duty for about seventy hours, and he also states that he had a hemoptysis following the inhalation of the gas. He was admitted to the hospital promptly on account of chronic tuberculosis and he states now that it is again active.

His nerves began to bother him in June, 1918, when he fainted after becoming excited and angry. He still has these fainting spells which, he states, are brought on by excitement, too much confusion, or if he becomes too tired; that owing to his examinations here this time, he had two series of these attacks—one last night, and two the night before. He was alone both of these times but similar attacks have been observed while he was in U. S. P. H. S. Hospital #68. He says that during these attacks he has been absolutely unconscious, varying in length from five minutes to a whole day. He does not jerk during these attacks but states that he may jerk some in coming to, and that he feels somewhat groggy afterwards, also all tired out; that, following these attacks, he is particularly nervous and jumpy, and if anyone touches him, he goes "straight up in the air." As long as he remains in a quiet place he gets along moderately

well. He has been in many hospitals. He states there was a period during which he remembers nothing. He is absolutely unable to earn his own living and cannot possibly look after himself, as when he attempts to work he gets tired out, weak, nervous, and is unable to finish the simplest job; cannot concentrate; his memory at times is very poor and at other times better. His sleep is variable. He never dreams.

He has been out of the hospital for five months now during which time he has been in Glacier National Park. He is applying for more compensation in order that he may employ someone to look after him and see that he takes proper care of himself and eats at proper hours.

Neurological Examination: Pupils were equal, reacted to light and accommodation. Ophthalmoscopic examination showed no choking. Eye movements normal. No facial assymetry. Tongue projected in midline. Other cranial nerves apparently normal. There was some tremor of the extended fingers. Co-ordination on F-N and F-F tests good. Patient held himself extremely tensely during the entire examination. The slightest touch, especially if unexpected caused him to jump violently, even when a hand was placed upon his knee. There was no evidence of any paralysis or paresis. Sensory examination unsatisfactory owing to "jumpiness" but no sensory changes made out to touch, pain, or deep muscle sense. Vibration sense was extremely acute. Deep reflexes both arms and legs markedly exaggerated but ap-

parently symmetrical. Normal Babinski responses both sides.

Mentally: No hallucinations made out. No definite delusions except that patient stated that he was ill treated while being cared for in one of the sanatoriums. He had the highest praise for doctors of District #10 and for U. S. P. H. S. #68, stating that they had co-operated in every way. Stream of thought was a little impaired as it was difficult to get a perfectly clear, coherent history and there was a little tendency to shift from one subject to another. There was no retardation, no peculiarities in mode of expression noted. He was moderately quiet and composed while being talked to and fairly well relaxed until the physical examination began. He was open, fairly accessible; attention good; alert; communicative. In subtracting sevens from one hundred, he made three unrecognized errors in one minute. His insight into his condition was fairly good. [93]

Blood pressure 132/82. Heart sounds clear and regular—rate 76 (?).

Patient impresses me as being unfit at this time to assume any responsibility or to earn his living in view of his previous long hospitalization, that he would be incapacitated for some time to come, and as he finds that he reacts well to life in the mountains I believe it would be to his interest to continue such life rather than further hospitalization—at any rate at this time.

Patient has apparently partially recovered from a psychosis—type undetermined at this examina-

tion. In view of having seen the patient only once and not having a complete history of his actions and illness while in the hospitals, I am unwilling at this time to make a more binding diagnosis.

A. W. MORRISON, M. D.

AWM:D.

Office of the District Supervisor, District No. 10.

TREASURY DEPARTMENT.

UNITED STATES.

PUBLIC HEALTH SERVICE.

MINNEAPOLIS, MINN.

November 8, 1921.

NEURO-PSYCHIATRIC CONSULTANT'S RE-
PORT.

McGovern, Herbert H. C-193 312.

U. S. Navy Reserve M. M. 1/c.

Kalispell, Mont., Box 396.

NEUROLOGICAL HISTORY: Claimant reported for examination this morning. Offered very little complaint of any kind; just states he was here because he was sent for an examination. Did not go into detail in regard to any of his past experiences, nor would he make any remarks about disagreeable incidents occurring during any period of his life. He did not volunteer any information nor did he offer any complaint. It was useless to make an attempt to obtain a history from claimant.

NEUROLOGICAL EXAMINATION: Muscular tone good, all voluntary movements being carried out accurately and well. There were no spasms or tremors of any muscle groups to be seen. There

were no areas of tenderness along any of the nerve trunks, nor were there any areas of referred pain. There were no areas of anesthesia, hyperaesthesia, etc. Pupils were equal and reacted to light and accommodation. No ptosis, nystagmus or von-Graefe. Other cranial nerves apparently normal. Reflexes all active and symmetrical, with the exception of the knee jerks which were equally decreased. Co-ordination tests carried out well. Gait shows no impairment, nor do the special senses.

MENTAL EXAMINATION: Male, white, adult, well developed and nourished. Neat and clean in personal appearance. Was reticent and evasive thruout examination. He was easily distracted by sudden noises, such as the slamming of a door, or the dropping of an implement, either of which made him jump out of his chair. He co-operated poorly and went into minute details about some treatment received at St. Barnabas Hospital and also at Asbury Hospital. Was somewhat flighty in his ideas, jumping from one topic to another without any suggestions on the part of the examiner. He seemed to be under high nervous tension. His greatest [94] desire seemed to be to get out. He claims that at times he has a desire to walk around and holler, but will not go into details when questioned on this. Insight fairly good, general grasp of things fairly good. Was orientated for time, place, and persons. Retention was poor. Constantly picked and pushed different objects around in the examiner's room.

Appeared fidgety and restless. Memory for past and present events fairly good. Hallucinations and delusions were denied. There were marked trends of persecution on the part of various neighbors and different officials but he offers no detailed information when questioned on same. There was marked psychomotor hyperactivity.

DIAGNOSIS: Psychosis in stage of remission at present. (Probably Manic depressive psychosis.)

PROGNOSIS: Guarded.

TREATMENT RECOMMENDED: Patient is at present working on a farm and claims to be getting along fairly well. Advise that he be encouraged to continue this vocation.

Has claimant a vocational handicap? Yes. Due to service? Yes.

Recommendations:

(a) Is the patient suffering from a disorder requiring constant supervision and totally unable to make a social adjustment? Yes.

(b) Is the patient suffering from a disorder requiring supervision and with it is able to adapt himself to social usages? No.

(c) Is the patient suffering from a residuum of a previous disorder and able to adapt himself to social usages without supervision? No.

In your opinion is it advisable that claimant resume his former occupation? Partially.

(a) Is training feasible? No.

D. S. BABTKIS,
Consultant Neurologist.

TREASURY DEPARTMENT.
UNITED STATES.
PUBLIC HEALTH SERVICE.

WSB:MH.

Minneapolis, Minn. 1/17/22.

Keith-Plaza Building,
Minneapolis, Minnesota,
Examined: Nov. 7, 1921.

McGovern, Herbert H. Jr. C-193 312.

U. S. N. Reserve, M. M. 1/c#.

Kalispell, Mont. Box 396.

Enlisted: June 17, 1917.

Discharged: Oct. 17, 1918.

Nativity: Minnesota.

Age: 30, white, single.

Previous occupation: Mining engineer.

Present: None. [95]

MILITARY HISTORY: Claimant discharged from service as a tuberculous patient. Was in hospital from May, 1918, to October, 1918, at Base Hospital, New London, Conn., Eastern Point, and Woodmen, Montana. Comes in with letter from Assistant Chief in Charge Psychiatry for neurological and chest examinations.

PRESENT COMPLAINT: Occasional cough. Nervousness.

PHYSICAL EXAMINATION: General well developed, well nourished. Head negative. Teeth in good repair. Tonsils mildly hypertrophied. Chest flat, partly due to posture. Impaired breath sounds, and occasional deep rales in left apex.

Heart rapid, no hypertrophy or murmurs. Pulse 110. Abdomen and extremities negative.

REFERRED TO DR. R. R. HEIN, CHEST CONSULTANT, who reports Nov. 7, 1921: Inspection—Stoop shouldered, body well nourished, expansion poor. Temperature 37.3, pulse 115 at 10:30 A. M. Present complaint: Cough, moderately more in morning, with some expectoration. Shortness of breath, weakness, night sweats, average once a week, chills and cold sweats. Examination: Expansion very limited. No rales noted. Resonance good. Diagnosis: Pulmonary tuberculosis. Revealed by X-ray. Remarks: This man has been living in mountain glacier park for past six months and I recommend he return to quiet life at Glacier Park.

REPORT OF X-RAY EXAMINATION. November 9, 1921: Steroscopic plates were made of the chest. These show the diaphragm shadows clear on both sides, no evidence of fluid in either chest. The heart and aorta shadows are normal in size, shape, and position. There is a slight nodulated peri-bronchial tuberculosis involving both upper lobes. The remainder of both lungs is clear. Conclusions: Peri-bronchial tuberculosis both upper lobes. Clinical significance doubtful.

DIAGNOSIS: 1. Manic Depressive psychosis.
2. Pulmonary tuberculosis.

PROGNOSIS: 1. Poor. 2. Fair.

REMARKS: Claimant is partially able to resume
former occupation and it is advised. Claimant
is not bed ridden and is able to travel. Hospi-

tal care not advised. Claimant will not accept.

Vocational handicap 10% plus, major. Train-
ing not feasible.

W. S. BROKER,
Examiner,
U. S. V. B.

Auth: Ltr. Chief Relief Section.

Encl: 2 N. P. Reports.

U. S. VETERANS' BUREAU.
NEURO-PSYCHIATRIC ATTENDING SPE-
CIALISTS' REPORT.

(To be attached to general examination report.)

Place—Minneapolis, Minn. Date—Nov. 10, 1921.

Name of Patient—McGovern, Herbert H. Jr. C-
193 312.

Rank and Organization—Mec. Mate. 1/c U. S. N.
Address—Kalispell, Mont.

1. Nervous and Mental History: In good health when entered service June, 1917. Then in good health until May, 1918. Gassed by gas from storage [96] battery, over worked. Sent to Base Hospital in Couvre. In hospitals until discharged S. C. D. Oct. 17, 1918. Felt weak, nervous, having fainting spells. Diagnosed tuberculosis May, 1918. At this time feels weak and nervous, poor sleep, poor appetite. Not able to do any work since discharge. December 1920, doesn't remember events except that he was in sanatorium. June 1918 had first fainting spell. Since then has had fainting spells as often

as several a day. They last five minutes to three hours. Always brought on by argument or some excitement. Never bit tongue, does not jerk but lies still. After spell feels weak, severe headache, and dizzy. If lives alone does not have spells so often.

2. Neurological Examination: Color and nutrition good. Pupils equal and react normally. Slight nystogmoid movements laterally, both eyes. Has photophobia, cornea injected. Deep and superficial reflexes all present and greatly exaggerated symmetrical. Romberg and Babinski negative. Is very hypersensitive to touch and pin point all over. Appears restless and jumpy, at one time jumped with a scream when testing for Babinski. Also jumped away from light when testing pupil reflexes.
3. Mental Examination: Memory fairly good. Has some suspicions that certain doctors may not treat him right. States there are certain people that he stays clear of. Is emotional and cries easily. Has phobias, especially of doctors. Can't concentrate on work. No hallucinations made out.
4. DIAGNOSIS: Constitutional instability with paranoid trend.
5. PROGNOSIS: Guarded.
6. Treatment Recommended:
7. Vocational Handicap Yes. Major, Minor or less than 10%. Traceable to service. Yes. Is training feasible? No.

Kind of training advised

Supervision required

(a) Is the patient suffering from a disorder requiring constant supervision, and totally unable to make a social adjustment No.

(b) Is the patient suffering from a disorder requiring supervision and with it is able to adapt himself to social usages Yes.

(c) Is the patient suffering from a disorder requiring a minimum of supervision and with it able to adapt himself to social usages

(d) Is the patient suffering from a residuum of a previous disorder and able to adapt himself to social usages without supervision No.

8. Remarks—Not advisable to resume former occupation.

9. Final disposition

10. When is another examination necessary

JULIUS JOHNSON, M. D.,

Name of Examiner.

Mr. MOLUMBY.—Exhibit 9 is a photostatic copy of the statement of W. C. Braisted, with the first endorsement signed by Victor Blue, which is a statement of his condition prior to his discharge, while in the hospital.

The COURT.—Doctors? [97]

Mr. MOLUMBY.—Yes, they are both doctors; I am sure they are doctors; they are men in charge

of the hospital where he was stationed prior to his discharge from the navy.

PLAINTIFF'S EXHIBIT IX.

UNITED STATES OF AMERICA.

UNITED STATES VETERANS' BUREAU.

March 17, 1922.

PURSUANT to Section 862 of the Revised Statutes, I hereby certify that the annexed photostatic copies of Statement of W. C. Braisted dated July 30, 1919; First Indorsement dated July 14, 1919, signed Victor Blue, are true copies of the originals on file in this Bureau.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States Veterans' Bureau to be affixed, on the day and year first above written.

[Seal]

C. R. FORBES,

Director of the United States Veterans' Bureau.

DEPARTMENT OF THE NAVY.

BUREAU OF MEDICINE & SURGERY.

WASHINGTON, D. C.

July 30, 1919.

To: Bureau of War Risk Insurance,

Treasury Department, Washington, D. C.

Subject: Case, C-#193312, Herbert Hugh McGOVERN, Jr. USNRF.

Reference: Call of June 18, 1919 to War Dept.

(Inclosed)

In the case of the above named the records of this Bureau show as follows: [98]

Born: Place Shurben, Minn. Date 6-22-93.

Enlisted: Place Puget Sound, Wash. Date 6-19-17.

Discharged: Place Nav. Hosp. Fort Lyon, Colo.
Date Oct. (?) 1918.

Diagnosis: Tuberculosis, chronic pulmonary.

Origin is in the line of duty. Disability not result of own misconduct.

Facts are as follows: Patient has been under treatment since June 26, 1918. On admission to Nav. Hosp., New London, Conn., he complained of persistent cough, with profuse expectoration; and has raised considerable bloody sputum; drenching night sweats. Present symptoms one month prior to admission, according to his statement. Physical expiration. to left stornum in 3d to 4th interspace relative dullness, with bronchial breathing and fine moist rales. Moderate dullness in both apices. X-Ray shows infiltration both apices, marked on right with peri-bronchial thickening of hilus of right lung. Sputum repeatedly negative for T. B.

Was transferred from the Hospital at New London, Conn., to Fort Lyon, Colo. When he was surveyed from the Service was under treatment at the Modern Woodmen's Sanitarium at Colorado Springs, Colo.

Present condition—Unfit for the Service.

Probable future duration—Permanent.

Recommendation—That he be discharged from the U. S. Naval Service at *thi* own request and

contrary to the advice of his medical Officer, notwithstanding this it is thought that this recommendation is in the interest of both the patient and the Government.

W. C. BRAISTED,
A.

NAVY DEPARTMENT.
BUREAU OF NAVIGATION.
WASHINGTON, D. C.

N-640-GAD-HN-Q.

July 14, 1919.

1st Endorsement.

To: Bureau of Medicine and Surgery.

Subject: McGOVERN, Herbert Hugh, Jr. 1161951,
EX-M. M. 1c., USNRF.

Re. Medical History.

The attached communication from the Chief Medical Advisor, Bureau of War Risk Insurance, Washington, D. C., is forwarded with the request that he be furnished with the facts in connection with the medical history of the above-named man. Records show that this man was discharged on October 17, 1918, at Naval Hospital, Fort Lyon, Colorado.

VICTOR BLUE,
CPS. [99]

Mr. MOLUMBY.—Exhibit 10 is a statement from the District Manager of the Veterans' Bureau, Minneapolis, to the Director of the Veterans' Bureau, concerning the history of his case:

PLAINTIFF'S EXHIBIT X.

UNITED STATES OF AMERICA.

UNITED STATES VETERANS' BUREAU.

March 16, 1922.

PURSUANT to Section 862 of the Revised Statutes, I hereby certify that the annexed photo-static copy of Letter dated Feb. 1, 1922, signed C. D. Hibbard, District Manager, No. 10, is a true copy of the original on file in this Bureau.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the United States Veterans' Bureau to be affixed, on the day and year first above written.

C. R. FORBES,

Director of the United States Veterans' Bureau.

FEDERAL BOARD FOR VOCATIONAL EDUCATION.

DIVISION OF VOCATIONAL REHABILITATION.

DISTRICT VOCATIONAL OFFICE.

February 1, 1922.

M4-JMC;MS.

RE: Herbert Hugh McGovern,

C-193 312.

Kalispell, Mont.

Director,

U. S. Veterans' Bureau,

Washington, D. C.

ATTENTION: Medical Division, Chief Rating Section.

Dear Sir:

On January 2, 1922, the Bureau requested an ex-

amination of the above-named claimant by a competent Neuro-Psychiatrist. On January 19, 1922, this office submitted to the Bureau copies of examination. Dr. C. Michaels reports: [100]

“The case of Mr. McGovern has required considerable attention on the part of our Sub-District Office at Helena, Mont. and also our District Office. Mr. McGovern went thru a psychosis and was hospitalized for that trouble at the Minneapolis Sanatorium from December 9, 1920, to February 1, 1921; he made a partial recovery from that psychosis in that his intellectual status was greatly improved. However, his emotional instability and paranoid attitude has continued very prominently ever since. Our reports from the field show that he has shown no ability to provide for himself at all. He is making no social adjustment whatever and is requiring constant supervision. He left U. S. P. H. S. Hospital #68, Minneapolis, Minn., last summer and was placed in a cottage near the lake, but it should be added that was feasible only thru the constant assistance given him by friends. It is our opinion that his present disability is continued evidence of his psychopathic constitution. As a matter of fact, the remission that he has had has been only partial. It seems to me that because he has actually gone thru a psychosis that his present condition is still actually psychotic in nature.

We respectfully request that the rating Section

review his case again and notify this office what action, if any, has been taken thereon.”

Respectfully,

C. D. HIBBARD,

District Manager, No. 10, U. S. Veterans' Bureau.

By H. D. WILLIAMS.

Mr. MOLUMBY.—Exhibit 11 is a photostatic copy of medical reports of Dr. W. S. Anderson, Dr. Leroy Southmayd, Dr. Hugh Debalim and Dr. J. L. McDonald:

PLAINTIFF'S EXHIBIT XI.

UNITED STATES OF AMERICA.

UNITED STATES VETERANS' BUREAU.

March 23, 1922.

PURSUANT to Section 862 of the Revised Statutes, I hereby certify that the annexed photostatic copies of Medical Report signed W. S. Anderson, dated Sept. 20, 1921; Report of LeRoy Southmayd, M. D., dated Nov. 27, 1920; Medical Report of LeRoy Southmayd, M. D., dated Nov. 24, 1920; Report of Hugh de Valin, Surgeon, Supervisor, 13th District, dated Feb. 25, 1920; Report of Medical Examination dated Sept. 1, 1919, signed J. L. McDonald, M. D., are true copies of the originals on file in this Bureau.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the United States

Veterans' Bureau to be affixed, on the day and year [101] first above written.

C. R. FORBES,

Director of the United States Veterans' Bureau.

REPORT OF PHYSICAL EXAMINATION.

U. S. PUBLIC HEALTH SERVICE.

C. No. 193312.

D. No. 10.

ARMY SER. Navy.

BUREAU OF WAR RISK INSURANCE.

FEDERAL BOARD FOR VOCATIONAL EDUCATION.

1. Claimant's name—McGovern, Jr., Herbert Hugh S.
2. Service, Rank and organization—U. S. Navy Reserve MN1c1 Naval Hosp., Ft. Lyons, Colo.
3. Present address—Kalispell, Mont. Box 396.
4. Age—30.
5. Color—White.
6. Principal prewar civil occupation Mining Engineer.
7. Date of induction—June 19, 1917.
8. Date of discharge—Oct. 17, 1918.

Read Instructions on Bank Before Commencing Examination.

9. Brief history of claimant's disability during service: After enrollment was assigned to SC #42 where he had charge of all mechanical apparatus on ship. Salt water got in storage batteries causing chlorine gas by com-

bination with Sulphuric acid in batteries. Claimant breathed this gas and was sent to hospital Base Hosp. New London, Conn. Diagnosed as T. B. and sent to various hospitals until discharge at Ft. Lyons, Colo. Naval T. B. Hosp. Oct. 17, (1921) 1918. Had frequent unconscious spells at hospitals.

Since discharge: Has "fainting" spells frequently, has difficulty in breathing, can do no work. Is drawing full compensation (temporary).

10. Present complaint (subjective symptoms, not diagnosis); Weakness, fainting spells, nervousness, when he gets excited.
11. Physical examination: (Claimant must be stripped; for tuberculosis examination use other side. If X-ray examination has been made, give the date, place, and authorship of the radiogram.)

Well developed and well nourished.

Eyes, ears, nose, mouth and throat; negative. The eye reflexes are sluggish. Other reflexes are exaggerated.

Abdomen, inguinal rings and genitalia, and extremities; negative.

Heart: Pulse before exercise 84; after 90;
Two minutes after, 84.

Chest: Stopped shouldered and hollow chested. Lungs show mobility decreased; prolonged expiration under the scapula each side. No rales. Diminished reso-

nance under each scapula. No increased fremitus.

Remarks: In view of this patient's history and chest finding; think he should be referred to a neuro psychiatrist and to an internist for examination of his lungs. This man will accept hospital care; only if he is sent to the Ashbury Hospital, Minneapolis.

Vision (Snellen chart)

(Uncorrected R20/20L20/20)

(Corrected by claimant's glasses R20/ L20/)

Hearing (spoken voice)

(R20/20

(L20/20 [102]

12. Diagnosis: 1. Psycho Neurosis. 2. Epilepsy, suspected. 3. Chronic Bronchitis. 4. Tuberculosis, pulmonary, suspected.
13. Prognosis: 1, 2 & 3 Undetermined. 4. Undetermined.
14. Is claimant able to resume his prewar occupation? No. 15. Is claimant bedridden? No. 16. Is claimant able to travel? Yes. 17. Do you advise hospital care? Yes. 18. Will claimant accept hospital care? Yes. 19. Has claimant a vocational handicap? (See par. 19 on reverse.) Yes. 20. Is his physical and mental condition such that vocational training is feasible? No. Over 10%. 21. Did you examine the man on this date? Yes.
22. Place: Kalispel, Mont. Date: Sept. 20, 1921.

Name—W. S. Anderson, M. D. Title—Act. Asst.
Surg. Vet. Bur.

B. W. R. I.

This report is in response to B. W. R. I. request
of —, 192—.

Supervisor, Dist. No. —

F. B. V. E.

In my opinion the disability is — due to ser-
vice. Training is — feasible. The applicant
has — a vocational handicap. Follow up report
is — every — days.

Date ———

INSTRUCTIONS FOR FILLING OUT THIS REPORT.

(Number of paragraphs correspond to questions on
other side.)

1. Check letter (S. M. W. D.) showing marital
state.
9. Give a BRIEF history as stated by the claim-
ant, showing the connection between his disa-
bility and his military service. Give nature
of injury or illness, when and where incurred
and treated, and whether discharged on that
account.
11. (a) In recording the results of a physical ex-
amination, do NOT give a diagnosis; give
the PHYSICAL SIGNS as you find them.
(b) In cases of WOUNDS, give location and size of
scars and whether or not they are adherent
and tender. ALSO, a description of the in-

jury to the underlying structures, with the resulting deformity, disturbed function, and limitation of motion expressed in degrees. Similar notation must be made in case of arthritis.

- (c) When the applicant complains of dyspnaea on exertion as a sequela of GASSING, HEART DISEASE, or bronchial ASTHMA, note his pulse and respiration before, just after, and 2 minutes after exercise, which should consist of hopping 25 times on each foot.
 - (d) In cases of HEART DISEASE, give general appearance, location of apex beat, and time of occurrence, location, and direction of transmission of murmurs, and rate and rhythm of pulse.
 - (e) If the claimant is wearing glasses, record the vision as corrected thereby. It is not expected that the general examiner will attest to fit proper lenses. If impairment of vision or hearing is found, the case should be referred according to the District Supervisor's instructions.
 - (f) If cases of neuropsychoses, an additional special report must be rendered by a competent neuropsychiatrist. Refer these cases according to the District Supervisor's instructions.
 - (g) If, in addition to the disability due to service, the man has any other impairment, describe it fully.
12. Use the nomenclature of the United States Public Health Service.

19. A claimant is considered to have a vocational HANDICAP when his disability would constitute a handicap in his principal prewar occupation, such as to affect employability or earning power. [103]

Men without a vocation, i. e., students, and those who have not worked at one occupation more than one year and are under 21 year of age, should have their handicaps considered in light of the general labor market.

20. Training is feasible when the mental and physical conditions permit AND when the suggested occupation is not incompatible with his disability.

SPECIAL TUBERCULOSIS REPORT.

(In cases of suspected pulmonary tuberculosis, the following information must be furnished in addition to the report on the other side of this sheet.)

If the man has been treated since discharge from military or naval service, give the name and address of hospital or physician, with dates, and the disability for which he was treated. In recording the physical examination use form below, filling in all blanks carefully.

Height, with shoes — inches. Weight (without coat) —. Did you weigh the man yourself? —. Normal —. Highest (lbs.) — (Within 1 year, date). Lowest (lbs.) — (Within 1 year, date). Sputum: Positive or negative —. If negative, how many specimens were examined? —. (Do not de-

fer sending report if sputum examination is not feasible, providing diagnosis is clear.)

EXAMINATION OF CHEST.

Shape: Mobility:

Palpitation: Fremitus:

Percussion: R. Lung:

L Lung:

Auscultation: R. Lung:

L. Lung:

(No examination is acceptable without auscultation during normal inspiration, following expiratory cough.)

Summary: Here indicate areas of infiltration, consolidation, etc., lobe by lobe:

Diagnosis:

Classification—National Tuberculosis Association Standards.

Condition—Active, quiescent, apparently arrested, or arrested. (Underscore the condition found.)

State—Incipient, moderately advanced, or advanced. (Underscore the stage found.)

Note.—When for any reason the diagnosis is doubtful, report is as UNDETERMINED and refer the claimant to a hospital with special facilities for making diagnosis, advising him at the same time that his examination has not been completed.

Name of examiner _____.

Address _____ [104]

TREASURY DEPARTMENT.

UNITED STATES.

PUBLIC HEALTH SERVICE.

Great Falls, Mont., Nov. 27, 1920.

From: LeRoy Southmayd, M. D.

Consultant at Great Falls, Mont.

To: District Headquarters, 10th Dist., U. S. P. H. S.

Keith-Plaza Bldg., Minneapolis, Minn.

Subject: Herbert McGovern, Jr. C—193312.

M. M. 1st Cl. U. S. N. R. F.

Marion, Mont.

I report that this man was discharged from Columbus Hospital on Nov. 27, 1920, as he had received transportation to Minneapolis permitting him to enter a tuberculosis sanatorium.

LeROY SOUTHMAYD, M. D.,
Consultant.

TREASURY DEPARTMENT.

UNITED STATES.

PUBLIC HEALTH SERVICE.

Great Falls, Montana, Nov. 24, 1920.

From: LeRoy Southmayd, M. D.

Consultant at Great Falls, Mont.

To: District Headquarters, 10th Dist., U. S. P. H. S.

(Attention of Dr. Bracken.)

Keith-Plaza Bldg., Minneapolis, Minn.

Subject: Herbert H. McGovern, Jr. C—193312.

Marion, Montana. M. M. 1st Cl. U. S. N.-
R. F.

Present Address: Columbus Hospital,
Great Falls, Mont.

This man gives a history of having had pulmonary tuberculosis ever since his discharge from the service on October 17, 1918. He has been in various hospitals the greater part of the time since then. He applied to-day for treatment and I have sent him to Columbus Hospital, this city. He showed me a letter dated Sept. 25, 1920, to him from Dr. H. M. Bracken in which he advises him that, if at any time he wishes sanatorium care, that he would be placed where he would be taken care of at the expense of the federal Government.

I would advise that transportation be sent to him so that he may be admitted to some tuberculosis sanatorium.

LeROY SOUTHMAYD, M. D.,
Consultant. [105]

TREASURY DEPARTMENT.

UNITED STATES.

PUBLIC HEALTH SERVICE.

Seattle, Wash., Feb. 25, 1920.

From: Supervisor, 13th District,
U. S. Public Health Service.

To: Chief Medical Advisor,
Bureau of War Risk Insurance,
Washington, D. C.

Subject: Herbert Hugh McGovern. C—193,312.
253 E. 39th St.,
Portland, Oregon.

1. Report the above-named man at Soldiers' Home, California.

HUGH de VALIN,
Surgeon U. S. P. H. S.
Supervisor, 13th District.

JRMcd:LN.

REPORT OF PHYSICAL EXAMINATION.
PAYETTE, IDAHO.

September 1st, 1919.

1. Name—Herbert McGovern. (193312.)
2. Rank & Organization—Mach. Mate, U. S. N. R. F.
3. Present Address—Roseberry, Idaho.
4. Age—26. Color—White. Previous occupation—Mining engineer.
5. Brief military history of claimants disability—While working in engine room *room* of S. C. 42 salt water got into storage batteries from faulty corking of deck causing sulphuric acid fumes to be given off, also engine room gas affecting claimant's lungs.
6. Present complaint—Weakness to Chronic cough.
7. Physical examination—Chronic Tuberculosis. Some slight moist in middle lobe of right lung. Otherwise physical condition O. K.
8. Diagnosis—Arrested Tuberculosis "X ray" Chi. Pul. 1241.
9. Prognosis—Poor. [106]
10. Is claimant able to resume former occupation? No.
11. Do you advise it? No.

12. Is claimant bed ridden? No.
13. Is claimant able to travel? Yes.
14. Do you advise hospital care? Yes.
15. Will claimant accept hospital care? No.
16. Remarks: Only determination was X-ray.

J. L. McDONALD, M. D.

Mr. MOLUMBY.—Exhibit 12 is a photostatic copy of report of Dr. R. A. Thornley, the report for the General Counsel signed by Robert Hugh Patterson, Assistant Director.

PLAINTIFF'S EXHIBIT XII.

UNITED STATES OF AMERICA.

UNITED STATES VETERANS' BUREAU.

March 16, 1922.

PURSUANT to Section 822 of the Revised Statutes, I hereby certify that the annexed photostatic copies of Medical Report of R. A. Thornley, M. D., dated Oct. 5, 1921; Report for the General Counsel dated Jan. 3, 1922, signed Robt. U. Patterson, Assistant Director. are true copies of the originals on file in this Bureau.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the United States Veterans' Bureau to be affixed, on the day and year first above written.

C. R. FORBES,

Director of the United States Veterans' Bureau.

TREASURY DEPARTMENT.

BUREAU OF WAR RISK INSURANCE.

Date—October 5, 1921.

MEMORANDUM.

From: Dr. R. A. Thornley.

To: File.

Subject: Neuro-Psychiatric Resume, C—193,312.

in case of Herbert Hugh McGovern, Jr.

The records of the Bureau from Medicine and Surgery, Navy Department, shows claimant enlisted June 19, 1917, at Puget Sound, Washington; that he was discharged October (??) 1918, at the Naval Hospital, Fort Lyon, Colo., for Tuberculosis, chronic Pulmonary—origin is in line of duty—disability not the result of own misconduct. The record further shows patient was under treatment from June 26, 1918, having been admitted to Fort Lyon, Colo., from the Hospital at New London, Conn. When he was surveyed from the service he was under treatment at the Modern Woodmen's Sanatorium, at Colorado Springs, Colorado. The records of the Bureau of Navigation, Navy Department shows he was discharged October 17, 1918.

Claim was filed April 16, 1919, alleging "total disability, which began about June 17, 1918, as the result of gas from salt water getting into storage batteries of the engine room. Accompanying this application is a physician's statement, whose name is undecipherable, stating he first treated claimant April 10, 1919, at the Modern Woodmen's Sanatorium, Colorado, for pulmonary Tuberculosis. It

may be possible that this physician was a member of the attending Staff at that Hospital.

The first examination on file is dated September 1, 1919, from Payette, Idaho, by Dr. J. L. McDonald, who gives a diagnosis of Arrested Tuberculosis. The next report is from the Soldiers' Home, Los Angeles, California, in the nature of laboratory report, dated January 1, 1919, which shows the claimant's sputum to be negative.

Claimant was admitted to the Pacific Branch, Soldiers' Home, January 1, 1920, and hospitalized for chronic Tuberculosis, with Negative sputum; was discharged February 25, 1920—same condition existing.

The first evidence of a Neuro-Psychiatric disability in this case is examination on file from the Sacred Heart Hospital, Spokane, Washington, dated May 3, 1920, which gives a diagnosis of Phychosis, *Mysterical*. He was in that hospital from May 3, 1920, to May 13, 1920. The next examination is by Dr. Price, who states, "This man presents no signs of mental disease or feeble mindedness. He has no symptoms of organic nervous disease. The attacks as described are typically hysteric which fact is in harmony with the man's general attitude, longing for attention and craving for sympathy, etc." Dr. Price recommended work for the patient at this time. This examination is undated, but received in the Bureau June 7, 1920.

The next examination on file was made at Kalispell, Montana, September 2, 1920, giving a diagnosis of Tuberculosis, chronic. The prognosis is

stated to be "good," and that claimant was able to resume his former occupation, which was advised by the examining physician, Dr. William S. Little. He was again examined at Great Falls, Montana, by Dr. LeRoy Southmayd, Consultant for the U. S. Public Health Service, who advised that claimant be hospitalized at some Tuberculosis [108] Sanatorium. Attached to this examination, is a general examination by Dr. W. S. Little, and dated a few days previous, namely November 12, 1920, stating, "No pathology found. Claimant is able to resume former occupation, and is not in need of hospitalization."

December 9, 1920, there is a report on file from St. Barnabas Hospital, Minneapolis, Minn., stating that claimant was admitted December 6, 1920. The report further states, "during his short stay in the hospital patient has had several episodes of pronounced disturbances. He became extremely irritable and noisy; talked loudly and the hospital authorities felt unable to care for him in this general hospital. J. C. Michael, Neuro-Psychiatrist, gives a report on the claimant stating, "patient was excitable. He gives an account of not having been able to work since his return from the Navy service; some people irritate him so much he cannot stand it any longer; have given him a lot of "rotten deals" and can't keep mind on one thing; that he can't figure out any mathematical problem." Dr. Michael was under the impression that claimant had an undetermined Psychosis.

Claimant was transferred to the Minneapolis

Sanatorium for observation. Accompanying Dr. Michael's report is a Tuberculosis examination, stating that no signs of active disease found in the lungs.

April 8, 1921, this case was the subject of a special letter from Dr. J. C. Michael, tenth District. The following abstract from Dr. Michael's letter is worthy of note. He states, "according to our history obtained, claimant has been a patient in many different private and Public Health Service Hospitals for a goodly part of the time since his discharge from the Navy. He is now a patient at Hospital No. 68, on the service of the undersigned, in this City. Diagnosis in this case is Constitutional Psychopathic State (Emotional Instability and Paranoid trend). He is unable at all to provide for himself, and to our best judgment it appears he will be unable to do so for an indefinite period, because of the chronic nature of his condition. The emotional instability and paranoid trends are sufficiently pronounced to cause this disability, yet general intelligence, information and insight show no particular disintegrating. Whatever abnormal conduct there has been is accountable to his paranoid ideas limited to his own bodily condition principally.

The second letter from Dr. Michael, dated April 26, 1921, states, "On April 3, 1920, this office wrote to you regarding the compensation status of the above-named, quoting also present condition, diagnosis and prognosis in the case. It was furthermore advised that a legal guardian was not con-

sidered necessary for this man in as much as mental deterioration was not present, and that the father of claimant being a well-established business man was on good terms with his son, and desires in cooperation with claimant to look after his financial affairs.

From February 8, 1921, to May 14, 1921, claimant was a patient at the U. S. Public Health Service Hospital #68, Minneapolis, Minn. He presented at this time Weakness; "fainting spells" anorexia, Nervousness; Hyper-excitability; dyspnoea; don't like to mix with people; feels weak in knees.

A careful neuro-psychiatric examination brought about the conclusion that this claimant did not present any signs of disseminated Multiple Sclerosis, but presented mental anxiety with additional paranoid trend. The diagnosis is given as Constitutional Psychopathic Inferiority (without Psychosis) but with emotional instability prominent and some paranoid trends. [109]

July 14, 1921, a report was submitted regarding the permanent and total status of the case, signed by Dr. J. C. Michael and Dr. D. S. Babthis, Minneapolis, Minn. In answer to the question with reference to the duration of the disability it is stated, "probably continue for a long time."

August 11, 1921, this Bureau was advised by Loy J. Molumby, Lawyer, Great Falls, Montana, that he had been discharged as this claimant's guardian; that the claimant was now living with his father at Kalispell, Montana.

COMMENT.

From a neuro-psychiatric standpoint this case has not been unusual. H was diagnosed in the navy as a case of Chronic Pulmonary Tuberculosis, and discharged therefrom as the result of this disability. Claimant has drifted about from one hospital to another seeking relief of his Tubercular condition. As a matter of fact he has suffered undoubtedly from over-hospitalization, and the perfectly natural mental attitude frequently resulting from more continued contact with other patients. He is now emotionally unstable, and has ideas that he has been unfairly dealt with which are given a name, paranoid. This man is not insane. He is mentally responsible, being apparently unable to make a social readjustment due to his condition. His reaction toward his environment is inadequate, and the sum total of his disability from a neuro-psychiatric standpoint is entirely emotional. Although variously diagnosed in the past as Psychosis, undifferentiated; Hysteria; Manic Depressive and Neurasthenia, he undoubtedly has none of these conditions.

That this man is not permanently nor totally disabled at the present time, as the result of his Constitutional Psychopathic Inferiority, Emotional Instability and so-called paranoid trend, is quite evident in examination report of his progress, while at U. S. Public Health Service Hospital #68, which shows, "this man made every substantial progress the last few weeks. Notice in regard to his compensation status and psycho-therapy gave apparently good results." This is the only reference in

the file to the part which compensation, and a desire for compensation may have in this case. Apparently the assurance that progress was being made in this man's case toward adjustment of his compensation served to allay much of his emotional instability and conflict. It must of course be remembered that he has always been a Constitutional Psychopathic Inferior. Since the condition is congenital, it will undoubtedly remain so. This much of his condition cannot be considered as the result of his service or as an aggravation thereto. There is every indication that claimant will not only recover from his emotional conflict, but that he *is* very much improved.

Therefore, from a Neuro-Psychiatric standpoint the case should be rated:

Less than 10% from date of separation from active service, October 17, 1918, to May 3, 1920; total temporary from May 3, 1920, to May 13, 1920. Temporary partial 10% from May 13, 1920, to December 9, 1920; Total temporary from December 9, 1920, to May 14, 1921; temporary partial 10% from May 14, 1921, for Constitutional Psychopathic Inferiority with superimposed emotional Instability and paranoid trend. Held as acquired in service or aggravated by service in accordance with provisions of Section 18, Public No. 47.

R. A. THORNLEY,
Chief, Neuro-Psychiatric Branch. [110]

January 3, 1922.

MEMORANDUM TO THE GENERAL COUNSEL.

SUBJECT: Herbert Hugh McGovern, M. M. 1/c
U. S. N. R. F. C-193 312.

An examination of the file in this case shows that the above captioned claimant was discharged from the Navy October 17, 1918.

The report of the Bureau of Medicine and Surgery is as follows:

“Patient has been under treatment since June 26, 1918. On admission to Nav. Hosp., New London, Conn., he complained of persistent cough, with profuse expectoration; has raised considerable bloody sputum; drenching night sweats. Present symptoms one month prior to admission, according to his statement. Physical expiration: to left sternum in 3d to 4th interspace relative dullness, with bronchial breathing and fine moist rales. Moderate dullness in both apices. X-Ray shows infiltration both apices, marked on right with peribronchial thickening of hilus of right lung. Sputum repeatedly negative for T. B.

Was transferred from the Hospital at New London, Conn., to Fort Lyon, Colo. When he was surveyed from the Service was under treatment at the Modern Woodmen’s Sanatorium at Colorado Springs, Colo.

Present condition—Unfit for the Service.

Probable future duration—Permanent.

Recommendation—That he be discharged

from the U. S. Naval Service at his own request and contrary to the advice of his medical Officer; notwithstanding this, it is thought that this recommendation is in the interest of both the patient and the Government.”

Form 526, Application for Compensation, filed April 16, 1919, shows that claimant had not worked since discharge as a result of his illness.

The examination made April 10, 1919, reports the disability as pulmonary tuberculosis and states that the claimant is totally disabled. The work sheet of May 1, 1919, shows that the claimant has been unable to work from that date.

On August 21, 1919, the claimant was rated Temporary Total from date of discharge.

Report of physical examination made September 1, 1919, reports the disability as Tuberculosis arrested: Prognosis—poor; claimant to resume occupation.

The claimant was admitted to the Pacific Branch National Home for Disabled Volunteer Soldiers, Sawtelle, California, January 1, 1920, and discharged February 25, 1920; Diagnosis—chronic pulmonary tuberculosis; sputum negative; temperature as a rule sub-normal. [111]

A report dated May 13, 1920, from Spokane, Washington, states that the claimant was admitted to Sacred Heart Hospital May 3, 1920; Diagnosis—hysterical psychosis, and for this he was rated Temporary Total from the date he was admitted to the hospital to the date discharged, May 13, 1920, and fifteen per cent (15%) subsequent to that. The

rating for tuberculosis was continued as Temporary Total.

The report of examination dated May 13, 1920, by U. S. Public Health Service reports the disability as hysterical psychosis and states that the claimant was sent to the Sacred Heart Hospital for observation.

The report of examination made September 2, 1920, reports the disability as pulmonary tuberculosis. The physical findings given, however, are considered insufficient to warrant such a diagnosis.

The report of examination of November 12, 1920, states that there is no pathology found upon examination. The case was accordingly rated December 17, 1920, "No disability.")

The report of examination by Dr. J. C. Michael, Consultant in Neuro-Psychiatry, dated December 9, 1920, states that the claimant was admitted to St. Barnabas Hospital, Minneapolis, Minnesota, on December 6, 1920. The disability is reported as indeterminate psychosis. This report states that the claimant was being transferred to the Minneapolis Sanatorium for observation and treatment. The examination made on the same date, December 6, 1920, by the Attending Specialist on Tuberculosis, Walter J. Marcle, states that there are no signs of active disease found in the lungs.

The reports in the file show that this claimant was admitted to the Minneapolis Sanatorium December 9, 1920; Diagnosis—manic depressive insanity.

The claimant was transferred from the Asbury

Hospital, Minneapolis, Minnesota, to U. S. Public Health Service Hospital #68, February 7, 1921. Diagnosis—Phychosis.

Papers in the file show that the Secretary of the Red Cross at Great Falls, Montana, informed the Bureau that this claimant was in need of a guardian. This was without the sanction of the District Supervisor or physician in charge of his case. The District Medical Officer states, in his report of April 8, 1921, that he desires payments withheld from the guardian appointed as a result of the activities of the Secretary of the Red Cross, until the matter has been arranged with the claimant and his family. Dr. Michael states that it appears to him that as long as the claimant and his family are willing, that no guardian should be considered, and that the claimant's mental condition has not progressed to such an extent as to warrant appointing a guardian.

The report of May 19, 1921, submitted by Dr. J. C. Michael, U. S. Public Health Service Consultant in Neuro-Psychiatry, reports the disability as "Constitutional Psychopathic Inferiority (without Psychosis), but with emotional instability prominent and some paranoid trends." The report of a Board of three physicians made July 14, 1921, gives the same diagnosis.

The examination made September 20, 1921, reports the disability as Psycho-Neurosis; Epilepsy suspected; chronic bronchitis, and pulmonary tuberculosis suspected. Under remarks the Examiner states that in view of the history and chest findings

he thinks the claimant should be referred to a Neuro-Psychiatrist and Internist for an examination of his lungs. The physical findings reported on this examination do not warrant the diagnosis of bronchitis or tuberculosis. [112]

SUMMARY.

While this patient was reported as having pulmonary tuberculosis in the Navy, and for a number of months subsequent to his discharge, at no time was his sputum positive, and if he ever did have pulmonary tuberculosis it has been arrested; there is no evidence of any lung involvement at the present time, nor has there been for the past year. The reports on file would indicate that the patient is a constitutional psychopath with emotional instability and entitled only to a rating for that disability at this time. There is no evidence in the file to indicate that he is entitled to a Permanent Total rating.

ROBT. U. PATTERSON,
Assistant Director.

Mr. MOLUMBY.—Exhibit 13 is the medical report signed by Dr. F. B. Nather, report of physical examination by Dr. Nather, and report of examination by Dr. George E. Price, endorsement by W. R. Leahey, C. F. Fiege, H. P. Downey and O. E. Denney and also by W. C. Rucker.

PLAINTIFF'S EXHIBIT XIII.

UNITED STATES OF AMERICA.

UNITED STATES VETERANS' BUREAU.

March 17, 1922.

PURSUANT to Section 882 of the Revised Stat-

utes, I hereby certify that the annexed photostatic copies of Medical Report dated May 13, 1920, signed F. B. Nather; Report of Physical Examination dated May 3, 1920, signed F. B. Nather, Surgeon; Medical Report signed George E. Price; Indorsements signed W. T. Leahey, C. F. Fiege, H. O. Downey, C. F. Feige and O. E. Denney; and Memorandum dated March 9, 1920, signed W. C. Rucker, are true copies of the originals on file in this Bureau.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the United States Veterans' Bureau to be affixed, on the day and year first above written.

C. R. FORBES,

Director of the United States Veterans' Bureau.

[113]

ORIGINAL—TO THE CHIEF MEDICAL AD-
VISOR.

TREASURY DEPARTMENT,

UNITED STATES.

PUBLIC HEALTH SERVICE.

Spokane, Wash., May 13, 1920.

C-193312.

Form: U. S. Public Health Service.

710 Hutton Bldg.

To: Supervisor, 13th District U. S. Public Health
Service, 115 White Bldg., Seattle, Wash.

Subject: Hospitalization of Herbert H. McGovern.

1. Admitted to Sacred Heart Hospital May 3, 1920.
2. Diagnosis, psychosis hysterical.

3. He was kept under observation in the hospital and while in the hospital an examination by the consulting Neurologist, Dr. Price, who made a diagnosis of hysteria. He was carefully examined by the medical officers of this station and no organic disease found.
4. He was discharged from the hospital May 13, 1920, condition improved.
5. Diagnosis on discharge was psychosis hysterical.

F. B. NATHER,

A. A. Surgeon, U. S. P. H. S. Medical Officer in Charge.

REPORT OF PHYSICAL EXAMINATION.

Spokane, Wash., May 3, 1920.

(C-193312)

1. Name—Herbert H. McGovern, Jr.
Army Serial No. none.
2. Rank and Organization—Machinist Mate 1/c
U. S. Navy.
3. Age—27. Nativity—Minn. Sex—M. Race—
W. Married ——. Single—X. Widower
——. Divorced ——.
4. Previous occupation—Mining Engineer.
5. Present Address—1411 W. Jackson Ave.,
Spokane, Wash.
6. Permanent Address—Marion, Mont.
7. Brief Military history of claimant's disability:
Enrolled June 19, 1917. In May or June,
1918, on S. C. #42, salt water got into stor-
age batteries forming gas—knocking him out
Admitted to B. H. at New London, Conn.—

here about [114] 2 months—then to Naval Sanitarium, Fort Lyons, Colo. Here about 1 month, then to Woodman Sanitarium at Colo. Springs, here 1 month. At St. Lukes Hosp. Kansas City for 2 weeks, then came to Connelly, Idaho, where he was under treatment for about 2 months. Then to Soldiers Home Hosp. at Los Angeles, Calif. Here for 2 months then to Spokane. Date of discharge Oct. 17, 1918.

8. Present complaint: Nerves all shot to pieces, weak—can hardly walk.
9. Physical examination: Head, neck and chest normal. Abdomen negative.

Dr. Pierce's report attached hereto:

Herbert H. McGovern, Jr.

(Place claimant
this sheet in upper
hand corner.)

(9 continued.)

1010

10. Diagnosis—Psychosis hysterical.
11. Basis for Diagnosis—Phy. examination Neuro-Psychiatric Ex.
12. Complication, sequela, etc.—None.
13. Where was sickness or disability incurred? On board S. C. #42.
14. How incurred—Gas formation.
15. Disposition—Examined.
16. Condition on disposition—same.
17. Prognosis—Good.
18. Is claimant able to resume former occupation?
Yes.
19. Do you advise it? Yes.

20. Is claimant bedridden? No.
21. Is claimant able to travel? Yes.
22. Do you advise hospital care? Yes, for observation.
23. Will claimant accept hospital care? Yes.
24. In your opinion is disability due or traceable *or* Service Yes.
25. The claimant has a vocational handicap which is: (Cross out the two not applying) ~~Major~~, Minor, ~~Negligible~~.
26. Is his physical and mental condition such that vocational training is feasible? Yes.
27. Remarks: Sent to Sacred Heart Hospital for observation.

F. B. NATHER,
Surgeon U. S. P. H. A.

Examined by F. B. NATHER. [115]

Herbert McGovern.

Neuro-Psychiatric Examination.

This man presents no signs of mental disease or feeble mindedness.

He has no symptoms of organic nervous disease.

The attacks as described by him are typically hysteric which fact is in harmony with the man's general attitude, longing for attention and craving for sympathy.

Diag.: Hysteria.

Recom: Work would be the best form of treatment for this particular case. As this will undoubtedly meet with strenuous opposi-

tion I would suggest his being sent to neurological center for treatment.

GEORGE E. PRICE.

Subject: Herbert H. McGovern, Jr. C-193312.

TREASURY DEPARTMENT,
UNITED STATES.
PUBLIC HEALTH SERVICE.

First Indorsement.

Respectfully transmitted to Governor, Soldiers' Home, Sawtelle, Calif., March 16, 1920.

Requesting reply through this office. Information requested to properly adjust claim for compensation.

By direction of Surgeon LONG:

W. R. LEAHY,

Acting Assistant Surgeon.

2nd Ind.

Pacific Branch, March 18, 1920,—to the Surgeon.

1. Herbert H. McGovern, Jr., late U. S. Naval Reserve, was admitted to this Home February 2, 1920, and discharged on request February 25, 1920. Attached letter is forwarded with the request that you please furnish information requested by indorsement, returning correspondence to this office.

2. By order of the Governor.

C. F. FIEGE,

Adjutant and Inspector.

3d Ind. [116]

Pacific Branch, March 18, 1920—to the Adjutant & Inspector:

(1) Admitted to hospital Jan'y 1, 1920.

(2) Chronic Pulmonary Tuberculosis (Sputa Negative).

(3) Discharged Feb'y 25, 1920, with evidence of Chronic Pulmonary Tuberculosis, and insomnia. Sputa was not found positive. Temperature as a rule sub-normal. Respiration 22 to 28; Pulse 80 to 90.

H. O. DOWNEY,
Surgeon.

4th Ind.

Pacific Branch, March 19, 1920—To the Medical Officer, Bureau of War Risk Ins., 624 Flood Bldg., San Francisco, California.

1. Returned, inviting attention to the foregoing indorsements.

2. By order of the Governor.

C. F. FIEGE,
Adjutant and Inspector.

5th Indorsement.

Respectfully returned to the Chief Medical Advisor, inviting attention to 3d Indorsement regarding HIM; ard-10, Herbert H. McGovern, Mr. C-193312.

By direction of Surgeon LONG.

O. E. DENNEY,
P. A. Surgeon (R).

TREASURY DEPARTMENT.

Washington, March 9, 1920.

From: Chief Medical Advisor.

In Reply Refer to

T. B. Sec.

C-193312.

HIM: ard-10.

To: Pacific Branch Nat. Home, D. V. S.,
Soldiers' Home, California.

Through Supervisor,
District No. 12,
San Francisco, Cal.

Subject: Herbert H. McGovern, Jr.

With reference to this claimant it is requested that the following information be furnished the Bureau. [117]

1. Date admitted to the hospital.
2. Diagnosis and condition when admitted.
3. Date discharged.
4. Diagnosis and condition when discharged.
5. Present diagnosis and condition, if not yet discharged.

It is also requested that the reply from the hospital be made in the form of an indorsement on this letter.

By authority of the Director.

W. C. RUCKER,
Chief Medical Advisor.

Mr. MOLUMBY.—This, your Honor, is a copy of the last rating sheet dated March 14, 1923.

Mr. HIGGINS.—No, it is the original itself, taken from the original Government records of

Washington, which gives him a Total Permanent rating from October 10, 1922, to date. (Marked Exhibit 14 for Plaintiff.)

Mr. HIGGINS.—Could I notice another objection, may it please the Court, for the purpose of the record, that we object to the introduction of any of these exhibits for a purpose other than to show a disagreement between the bureau and the plaintiff, and not for the purpose of showing the disability of the plaintiff, because plaintiff has given no reason why he hasn't called any of these doctors as witnesses, nor any reason why he hasn't taken their depositions; for the further reason that these reports by doctors are based for compensation and not for insurance, and any ratings that are shown in these exhibits are ratings for compensation and not ratings for insurance.

Mr. MOLUMBY.—They are offered both for the purpose of showing a disagreement, which of course is unnecessary because it is admitted by the pleadings, and secondly as admissions on the part of the Government by officers who have authority to and who are in position to make admissions on the part of the Veterans' Bureau.

The COURT.—Doctors, all officers?

Mr. MOLUMBY.—These doctors are all officers of the Veterans' Bureau.

Mr. HIGGINS.—Not all of them.

Mr. MOLUMBY.—All the doctors who have given any ratings whatsoever are doctors of the Veterans' Bureau. [118]

The COURT.—Does it show that?

Mr. MOLUMBY.—I expect to connect that up by questioning Mr. Lawler afterwards.

PLAINTIFF'S EXHIBIT XIV.

UNITED STATES VETERANS' BUREAU.

Central Office Board of Appeals.

Form 6.

CENTRAL OFFICE BOARD OF APPEALS.
RATING SHEET.

Dated—March 14, 1923.

From: Central Office Board of Appeals.

To: Compensation & Claims.

Claimant's Name: Herbert H. McGovern,

Kalispell, Mont.

C-193,312

TF/em.

Based on all evidence in the file at the present time, including such evidence as may be shown by any officially signed memoranda of personal interviews held with claimant or his authorized representative, it is the opinion of this Board that the disability of the claimant above mentioned should be rated:

Temporary total from date of separation from active service to Oct. 9, 1922.

Permanent total on and after Oct. 10, 1922, under Regulation 4, B, IV, (b).

(Psychosis maniac depressive and psychoneurosis.) Service connected.

(See memo to General Counsel, dated Nov. 27, 1922.)

Claimant declared permanently and totally disabled and file will be held in the Central Office.

THOS. FOSTER,
Chairman (Medical).
BRIG. S. YOUNG,
Insurance.

(Name illegible)

Legal

Mr. MOLUMBY.—Exhibit 15 is the rating signed by Robert Hugh Patterson, Assistant Director in Charge of the Medical Division, dated November 9, 1921.

PLAINTIFF'S EXHIBIT XV.
RATING SHEET.

U. S. VETERANS' BUREAU,
Medical Division.

Form 2505. Rev. May, 1921.

Date—Nov. 9, 1921.

WEC/mg 10. [119]

From: Medical Division to Claims Division.

Through: Special Service Section.

Claimant's name: Herbert H. McGovern. 'C—193-312.

Address: Box 396, Kalispell, Montana.

Based upon all the evidence in the file at the present time, it is my opinion that the disability of the claimant mentioned above should be rated as:

TB.: No pulmonary disability established. (Chronic Bronchitis, suspected Tuberculosis.)

NP.: Less than ten per cent from date of separation from active service (10/17/18) to

5/3/20. Temporary total from 5/3/20 to 5/13/20. Temporary partial 10 per cent (10%) from 5/13/20 to 12/9/20. Temporary total from 12/9/20 to 5/14/21. Temporary partial ten per cent (10%) from 5/14/21. Held as acquired in service or aggravated by service in accordance with provisions of Section 18, Public No. 47. (Constitutional Psychopathic inferiority with superimposed psychoneurosis.)

Exam. 1/2/22.

ROBT. U. PATTERSON,

Assistant Director, in Charge of Medical Division.

By _____, M. D.

Chief SMS.

Mr. MOLUMBY.—Exhibit 16 is a rating and adjudication of his case by the Board of Appeals, signed by Robert Hugh Patterson, Assistant Director in Charge of the Veterans' Bureau.

PLAINTIFF'S EXHIBIT XVI.

UNITED STATES VETERANS' BUREAU.

Medical Division.

Form 2505—Rev. Oct. 1921.

Date Dec. 6, 1921.

M. B. of Review—TF/df:10.

From: Medical Division to Claims Division.

Through: Board of Appeals.

Claimant's name: Herbert P. McGovern.

Kalispell, Mont. Box 396.

C-193312 N.

Based upon all the evidence in the file at the pres-

ent time, it is my opinion that the disability of the claimant mentioned above should be rated as:

T.B.: Temporary total from date of discharge to Oct. 30, 1920.

Less than ten per cent from Oct. 30, 1920.

Alleged T. B.—Service connected.

[120]

N.P.: Less than ten per cent from date of discharge to May 3, 1920.

Temporary Total from May 3, 1920, to May 13, 1920.

Temporary Partial ten per cent (10%) from May 13, 1920, to Oct. 30, 1920.

Temporary Total from Oct. 31, 1920, to May 15, 1921.

Temporary Partial fifty per cent (50%) from May 15, 1921.

Held as service connected under Section 18, Public 47, 67th Congress. (Practically continuous hospitalization for Constitutional Psychopathic Inferiority with a superimposed emotional instability and paranoid trend.)

Combined: Temporary Total from date of discharge to May 15, 1921.

Temporary Partial fifty per cent (50%) from May 15, 1921.

Constitutional Psychopathic Inferiority with superimposed emotional instability and paranoid trend and Tu-

tuberculosis chronic apparently arrested.

ROBT. U. PATTERSON,

Asst. Director, in Chg. Med. Div.

By _____, M. D.

Chairman, Board of Review.

Mr. MOLUMBY.—Exhibit 17 is a communication from General Counsel and an officer of the Veterans' Bureau to the Board of Appeals of the Veterans' Bureau, dated February 14, 1923, concerning the case of Herbert McGovern:

PLAINTIFF'S EXHIBIT XVII.

U. S. VETERANS' BUREAU.

Legal Division.

February 14, 1923.

From: The General Counsel.

To: The Board of Appeals.

Subject: McGovern, Herbert H., MM., 1/c, U. S. N.
C-193,312.

Herbert H. McGovern was discharged from the service October 17, 1918, on Surgeon's certificate of disability, because of tuberculosis. On January 1, 1920, he was admitted to the National Home for Disabled Soldiers at Sawtelle, California, and was found to be in a very nervous condition, and suffering from insomnia. On May 3, 1920, he was admitted to the Sacred Heart Hospital, Spokane, Washington, and found to be suffering with hysterical psychosis. Several subsequent examinations show that the sailor was suffering from some mental disorder.

On November 13, 1922, the Medical Board of Re-

view and the Board of Appeals made the following rating in this case: [121]

“Permanent and Total from October 10, 1922, for Psychosis, manic depression and Psychoneurosis.

“Service connected. Regulation 4 B IV (b).

“This rating is made on the advice of Chief Consultant, Col. Roger Brooke, and Dr. G. A. Rowland, whose signatures are attached.

“File will remain in Central Office.”

As the evidence in the file clearly shows that the sailor has been continuously unable to follow a substantially gainful occupation since his discharge from the service, your opinion is requested on the following points:

(1) Is it probable that his mental condition resulted from a toxic condition in a tubercular man of neuropathetic makeup in such a manner that his present disability can be said to result from the causes which have existed since the date of discharge; if so, should he not be rated as permanently and totally disabled from discharge because of such conditions?

In the consideration of this question your attention is called to the following excerpt in an opinion of this office to Dr. Thomas Foster, Chairman, Board of Appeals, dated December 19, 1922:

“It is to be noted that the specifications as to symptoms of permanent and total condition contained in section V of the Regulation are not necessarily exclusive but in practice I suppose that you treat them as being so, and it would perhaps be

difficult to proceed in the ordinary run of cases upon any different basis without a revision of the Regulation. However, I think that there is one situation in which you may safely, on proper evidence, make permanent total ratings in cases that do not fall strictly within any of the subdivisions of Section V. The situation to which I refer is that having to do with certain classes of retroactive ratings. That is, cases where ratings have been made which were unquestionably sound and reasonable upon the evidence presented at the time they were made, but which appear in the light of the subsequent course and progress of the disease upon which they were based, to be inaccurate. So long as you have the right to revise a rating retroactively, this subsequent and often very enlightening evidence is certainly entitled to weight. I do not mean to say that simply because one dies from tuberculosis or any other disease that he was necessarily permanently and totally disabled for any appreciable period of time theretofore. His case may never have assumed a permanent aspect, yet, perhaps at a time when his prospect of recovery seemed assured, he may be carried off by some sudden and unfortunate development of the malady. On the other hand, the patient's death or retrogression may unquestionably throw a new light on his condition at a time long prior to its occurrence. It may prove, for instance, that the condition was much more serious than was discovered by former examinations. It may strongly indicate that symptoms were overlooked or that con-

ditions existed which were not marked by their usual symptoms.

“There can be no objection, I think, to taking all of these things into consideration in revising awards retroactively, where such revision is justified by law. * * * ”

(2) If you find that McGovern is not entitled to permanent total disability rating from date of discharge, is he not entitled to a permanent and total disability rating from January 1, 1920, the date upon which he was noted to be suffering with a nervous condition, or May 3, 1920, the date upon which he was diagnosed as suffering with hysterical psychosis?

As litigation is pending in this case your careful and prompt consideration will be appreciated.

WILLIAM WOLFF SMITH,

General Counsel.

LAL/sos. [122]

8

TESTIMONY OF L. A. LAWLER, FOR PLAINTIFF (RECALLED).

L. A. LAWLER, recalled on behalf of plaintiff, testified as follows:

I have seen the certified copies of the originals which have just been introduced or offered in evidence. I know who some of the parties are who signed these different ratings and sheets and different medical examinations.

Q. Do you know whether or not all of them are officials of the Veterans' Bureau, either examin-

(Testimony of L. A. Lawler.)

ing doctors or working in the bureau itself as rating officers or doctors?

A. I am not sure just which records you have put in are certified; some of them are not connected with the bureau, as my understanding is. Exhibit 2 is a certified, true copy of a medical report of Herbert Hugh McGovern, Jr., former Machinist Mate, First Class, while in the U. S. Naval Reserve Forces. It was secured under certification from the Navy Department by the Veterans' Bureau, and now a part of the Veterans' Bureau files. Exhibit 3 is plaintiff's application for insurance signed by himself and is an official document of the Government, or a certified copy of an official document.

The COURT.—What is this application for insurance?

A. That was his original application for insurance while he was serving in the navy.

The COURT.—By which he was insured and under which he is now bringing suit? A. Yes.

Q. Exhibit 4, state to the Court what that is.

A. Application of Herbert Hugh McGovern for compensation; report of examining physician on Form 504 by some doctor whose name is illegible. I cannot tell definitely whether that document was made by a doctor working for the bureau, an examining doctor for the Veterans' Bureau, but probably not. Exhibit 5 is the medical rating schedule approved by the director July 15, 1921. That is not the regulations of the Veterans' Bureau. It is just a

(Testimony of L. A. Lawler.)

medical rating schedule. Exhibit 6 is the Brief Face for compensation purposes.

Q. Explain to the Court what you mean by Brief Face, if you will. [123]

A. When a man is adjudged entitled to compensation the examiner of the bureau in charge of his case prepares an award of compensation which he submits to the reviewer for approval, and if approved, an award card is made up for the purpose of paying compensation. This is the Brief Face. This is an official document of the Veterans' Bureau. Exhibit 7 is several rating sheets made by the Medical Division of the Veterans' Bureau for the purpose of determining the amount of compensation to which plaintiff was entitled. It is an official document of the Veterans' Bureau. Exhibit 8 is a report of physical examination by Dr. Morrison, signed by Dr. Babtkis, and report of Dr. Julius Johnson. I believe both of them are, or they were at the time, officials of the Veterans' Bureau. That is also an official document of the Veterans' Bureau. Exhibit 9 is a statement of W. C. Braisted of the Navy Department concerning McGovern's record in the navy.

Q. That is also an official document of the Veterans' Bureau?

A. It is a part of our files. Exhibit 10 is a letter signed by C. D. Hubbard, District Manager No. 10, U. S. Veterans' Bureau, by H. D. Williams. C. D. Hubbard was District Manager at the time that letter was written. As to the other party, I think

(Testimony of L. A. Lawler.)

that is Dr. Williams; I don't know what his initials are. Dr. Williams is an official of the Veterans' Bureau.

Q. That is Harry L. Williams, instead of H. D. And Harry L. Williams is an official of the Veterans' Bureau, or was at that time?

A. Yes, sir. Exhibit 11 is a report of physical examination by Dr. W. S. Anderson; also by Dr. LeRoy Southmayd; and also one by Hugh Devalan. These doctors are not Veteran Bureau doctors of my own personal knowledge, no.

The COURT.—What is that?

A. Not of my own knowledge.

Q. Exhibit 12, will you state what that is.

Mr. MOLUMBY.—If the Court please, if it will save time, I can testify, of my own knowledge to two of those doctors, and I think one of the doctors here can swear to them.

A. This is a report of Dr. R. A. Thornley, dated October 5, 1921. He is an [124] official of the Veterans' Bureau and is chief of the neuro-psychiatry section and was at the time that was made. Exhibit 13 are medical reports by Dr. T. B. Nather; report by Dr. George E. Price; indorsement by Dr. W. R. Leahy, Acting Assistant Surgeon; and C. F. Fiege, Adjustant Inspector. I don't know whether they are examining doctors of the U. S. Veterans' Bureau or officials of the Veterans' Bureau.

Q. You know regarding Dr. Price, who was subpoenaed, do you, as a witness in this case?

(Testimony of L. A. Lawler.)

A. I know he was a witness; I don't know if he was an official of the bureau. Exhibit 14 is a rating sheet by the Board of Appeals. The last rating sheet, rating that was made by the Board of Appeals, made for the purpose of compensation. Exhibit 15 is an unsigned copy of a rating made on a medical form, unsigned, dated November 9, 1921. It is a part of the file kept by the United States Veterans' Bureau in regard to McGovern's case.

Q. And one of the ratings which was controlling at the time it was made?

A. It is a copy of a rating. The same is true of Exhibit 16. Exhibit 17 is a memorandum signed by the General Counsel of the Veterans' Bureau and dictated by myself, by L. A. Lawler, addressed to the Board of Appeals, making inquiry as to the rating McGovern was entitled to on the evidence on file.

Cross-examination by Mr. HIGGINS.

With reference to the ratings in those certified copies of various documents from the Bureau of War Risk Insurance, all those ratings were made for the purpose of determining the amount of compensation.

Q. And not for determination of any liability under a war risk contract?

A. No, except that they would be used for insurance purposes if any evidence had been produced to show a total disability according to the medical rating schedule.

Q. In addition to the ratings shown in most of

(Testimony of L. A. Lawler.)

those exhibits, a consideration would be given also to the provisions of Exhibit No. 5, being the Medical rating Schedule approved July 15, 1921, before any official rating would be made for a liability on an insurance contract? [125]

A. Yes, only the Board of Appeals can rate a case for insurance; anyone in the medical division may make a rating for the purpose of compensation; and even though a rating for compensation may be permanent and total, that rating would not become final for insurance until its consideration had been given by the proper board to the medical rating schedule approved July 5, 1921. In other words, there is a difference between compensation and insurance. A permanent and total rating under compensation is based on different grounds and for different reasons, in some respects, than rating of permanent and total disability under insurance. The same evidence might be used for insurance purposes as for compensation purposes, but it would never be considered as an insurance award unless a permanent total rating could be made up of data at the time when his insurance was in force.

Q. What I mean is, in addition to the considerations given to a permanent and total rating for compensation, consideration also must be given to the regulations under the medical rating schedule?

A. Yes.

Q. And what constitutes permanent and total disability in certain cases or certain indispositions is provided for by the medical rating schedule?

(Testimony of L. A. Lawler.)

A. Yes.

Q. And unless the disability of an insured person, under War Risk Insurance, comes within the provisions of the Medical Rating Schedule, there cannot be a rating of permanent and total disability?

A. No, that is in fact a regulation of the bureau.

Q. So that, in other words, a rating of permanent and total disability, given for compensation purposes is not final so far as rating of permanent and total disability is concerned as applying to War Risk Insurance?

A. It might be; if it is made by the Board of Appeals it would be for both purposes.

Q. But the matter, as we have it before us here, with reference to these exhibits, where the rating has not been made by the Board of Appeals?

A. One of them was, the last rating. [126]

Q. Then that was made for compensation and not for insurance?

A. Yes, because there was no insurance question before the bureau; that rating is made effective as of October, 1922; plaintiff had no insurance in force after August 31, 1919, so in making that rating no consideration was given to the insurance question at all.

Redirect Examination by Mr. MOLUMBY.

It is not a fact that before an insured can draw his insurance for total disability he must be rated totally and permanently disabled for compensation. Insurance can be drawn without drawing any com-

(Testimony of L. A. Lawler.)

compensation. It has been done several times. Several men are drawing it now. Drawing insurance without compensation and *vice versa*.

Q. However, in the case at hand, if he were shown by the evidence in the files for the purpose of compensation to be totally and permanently disabled ever since his insurance lapsed, or from the time his insurance did lapse till the present date, that evidence would be used by the bureau to determine whether or not he was totally and permanently disabled for insurance purposes, would it not?

A. Yes.

Q. And can be used? A. Yes.

Recross-examination by Mr. HIGGINS.

Q. Another question: Let me ask you, Mr. Lawler, did not the rules and regulations of the Department previously provide that in case of hospitalization for a period of six months, at the expiration of that time the patient was disabled he would automatically get a permanent and total disability rating regardless of whether or not he was permanently and totally disabled in fact? A. Yes.

Mr. MOLUMBY.—We object; that has nothing to do with any of these exhibits. That rule is not put into effect with any of these exhibits.

The COURT.—You are asking if there is such a rule and regulation?

Mr. HIGGINS.—Yes. I think the courts take judicial notice of regulations. [127]

The COURT.—You ought to be able to produce it, if there is.

(Testimony of Dr. George E. Price.)

Mr. MOLUMBY.—We want something better than the recollection of the witness, because it is easy to produce it; not that we doubt the witness' word at all, but there is always a chance for mistakes.

The COURT.—It can stand in the record for what, to use a common expression, it may be worth.

TESTIMONY OF DR. GEORGE E. PRICE, FOR
PLAINTIFF.

Thereupon Dr. GEORGE E. PRICE, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. MOLUMBY.

I am the Dr. George E. Price who made this report. I do not know Drs. H. O. Downey or Fiege. I do know Dr. Nather. Dr. Nather, on May 13, 1920, was not an examining doctor of the Veterans' Bureau but of the Public Health Service which preceded the Bureau. That is also true of myself. The number of that exhibit is 13.

Mr. MOLUMBY.—I can swear in regard to Dr. LeRoy Southmayd who signed the medical report in Exhibit No. 11, that he was at that time, and still now is, an examining doctor of the Veterans' Bureau.

NOTE:—** Upon explanation by counsel for plaintiff that certain witnesses for plaintiff were not present, it was agreed that testimony would be introduced in behalf of defendant and plaintiff's absent witnesses could testify later.

Mr. HIGGINS.—In view of the situation, may it please the Court, we would like to put in our testimony conditional that if after all of the proof is put in on behalf of the plaintiff, we may have the right to move for dismissal.

The COURT.—If you move, what value is it? Give me one single reason why a motion to dismiss at end of plaintiff's case will avail you anything that you do not get at the conclusion of the trial.

Mr. HIGGINS.—We simply want to keep the record straight. [128]

The COURT.—The record is supposed to serve a purpose. If you can tell me any purpose it will serve—

Mr. HIGGINS.—I have found authority that where you omit to make motion for dismissal at the proper time, it is deemed waived, and if you do make it and it is overruled you protect what rights you have under the motion.

The COURT.—Don't you get the same thing at the end of a case by decision? Do you mean to tell me if you make a motion to dismiss and at the end of the whole case the decision goes to the plaintiff a motion to dismiss helps you any?

Mr. HIGGINS.—If the Court should rule the motion to dismiss should have been made earlier.

The COURT.—Proceed.

TESTIMONY OF DR. C. E. K. VIDAL, FOR
PLAINTIFF.

Thereupon Dr. C. E. K. VIDAL, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. DAVIDSON.

My name is C. E. K. Vidal. I am a physician and have been since 1891. Since April, 1919, I have been superintendent of the State Tuberculosis Sanitarium and specialized in tuberculosis. I hold such position at present, and as such, come in contact with a great many cases of tuberculosis. I have made a considerable study of that disease and am familiar with its causes, symptoms and results.

Q. In your practice, Doctor, as a tuberculosis specialist, have you had occasion to observe and study the malady or disease known as hysteria?

Mr. HIGGINS.—We object, may it please the Court, to this line of testimony, on the ground and for the reason that none such has ever been submitted before the Board at Washington to act upon, nor has the same been a basis of disagreement between the plaintiff and defendant in this action.

The COURT.—Overruled; if not competent the Court will give it no consideration. [129]

Mr. HIGGINS.—Exception.

A. I will answer the question as you gave it to me in the negative and say no.

Q. In your practice as a tuberculosis specialist, Doctor, have you come in contact with people afflicted with hysteria? A. No.

(Testimony of Dr. C. E. K. Vidal.)

Q. Would you say, Doctor, that tuberculosis might be a contributing cause to hysteria?

Mr. HIGGINS.—Objected to, not having any bearing upon the issues in this case, the question being indefinite and uncertain and not involving all the circumstances and conditions of the plaintiff in this action bearing upon his physical condition.

The COURT.—Overruled.

Mr. HIGGINS.—Exception.

A. I would consider tuberculosis a possible exciting cause of any nervous excitability, either a psycho-neurosis or a hysteria.

Q. Would you say, Doctor, that the presence of tuberculosis in a patient, accompanied by a nervous strain or nervous shock would bring about hysteria?

Mr. HIGGINS.—Objected to for reasons previously stated.

The COURT.—Overruled.

Mr. HIGGINS.—Exception.

A. I would consider that the toxin in tuberculosis a possible exciting cause of a nervous upset in either of the three classes already referred to.

Q. Is it possible, Doctor, for a nervous shock accompanied by tuberculosis to bring about hysteria in a case where the absence of tuberculosis might not have any effect?

Mr. HIGGINS.—We object; no foundation for the testimony; no testimony along that line in this action.

The COURT.—Oh, anything is possible; we don't

(Testimony of Dr. C. E. K. Vidal.)

proceed and try and determine causes on bare possibilities. Objection sustained to that question.

Q. Doctor, did you hear the testimony of the witnesses this morning describing the symptoms of the plaintiff in this case? [130]

A. Only fragmentary parts of it. My hearing is a little off and I didn't hear it accurately.

Q. Doctor, if those witnesses have testified, and the doctors have corroborated their testimony by saying that this man has been suffering from hysteria and hysterical fits, would you say that the worry over being told that he was a tubercular patient might bring about a hysterical frame of mind?

Mr. HIGGINS.—We object, the question is not accurately premised.

The COURT.—Have you finished your question?

Mr. DAVIDSON.—I have.

The COURT.—There is not much for the Doctor to pass on; he may; overruled.

Mr. HIGGINS.—Exception.

A. Your Honor, I can only answer that in a general way. I cannot answer in regard to a specific case.

The COURT.—Very well.

A. I would say, that given an excitable individual, burdened possibly by a bad head, the nervous toxin might be an exciting cause as to whether or not he would remain a normal individual.

Q. Would the worry over having tuberculosis sometimes be a contributing cause towards hysteria?

(Testimony of Dr. C. E. K. Vidal.)

Mr. HIGGINS.—We object upon the grounds previously stated.

The COURT.—Overruled.

Mr. HIGGINS.—Exception.

A. In an excitable individual.

Q. Doctor, would you say that a man suffering from tuberculosis and having from one to fifteen hysterical fits a day, was totally and permanently disabled? A. No.

Q. Is the presence of tubercular germs in the sputum necessary to determine whether or not a man has tuberculosis, Doctor? A. No. [131]

Cross-examination by Mr. HIGGINS.

Q. Suppose, Doctor, that this plaintiff were examined to-day, having been sent to an expert on tuberculosis with the supposition that he had tuberculosis and was informed by that expert that he had no tuberculosis, would that information given to this plaintiff be an exciting cause to produce an hysterical outburst on the part of this plaintiff a few days later?

A. It would depend entirely upon the personality of the plaintiff.

Q. But if you say that tuberculosis is an inciting cause and you informed the patient he has no inciting cause, the inciting cause is removed, isn't it?

A. Yes. I have heard of "pension" and "compensation neurosis." That is a recognized condition in medicine.

Q. And that is a condition particularly the

(Testimony of Dr. C. E. K. Vidal.)

compensation neurosis, that has become quite prevalent since the last war, or would your experience as a physician permit you to know about that?

A. My experience has not been extensive enough to warrant replying to the question.

Mr. MOLUMBY.—The only other witness is the plaintiff and the doctor who has not yet arrived from Minneapolis.

The COURT.—How comes it this doctor did not get here?

Mr. MOLUMBY.—I can't say, your Honor, unless it is the floods reported in South Dakota. I had a wire from him day before yesterday that he would be able to be here this morning, and then another wire on board train that he wouldn't be able to make it before to-morrow morning.

IT IS HEREBY STIPULATED AND AGREED by and between the plaintiff, Herbert H. McGovern, Jr., through his counsel of record, and the United States of America, through Ronald Higgins, Assistant United States Attorney for the District of Montana, that the deposition of Major W. S. Bentley may be taken before Dudley Crowther, a Notary Public for the State of Montana, and that the same may be used as part of the testimony on behalf of the plaintiff in the above-entitled action. [132]

DEPOSITION OF MAJOR W. S. BENTLEY,
FOR PLAINTIFF.

Taken before Dudley Crowther, notary public for the State of Montana, at Great Falls, Montana, on June 30, 1923.

W. S. BENTLEY, sworn as a witness on behalf of the plaintiff, in answer to the questions put to him testified as follows:

Direct Examination by Mr. MOLUMBY.

My name is W. S. Bentley. My present headquarters is Sioux Falls, South Dakota. I am a physician and surgeon and have practiced thirty years. My official title is Surgeon, Reserve United States Public Health, Detailed for Duty with the United States Veterans' Bureau. Detailed at present at the headquarters of District No. 10, Minneapolis, Minnesota, stationed now at Sioux Falls, South Dakota. In the fall of 1920, I was in the District Office at Minneapolis, and on February 1, 1921, I reported for duty to the Commanding Officer at Asbury Hospital, Minneapolis, Minnesota. I am acquainted with the plaintiff, Herbert McGovern. First met him either the first or second week in February, 1921. From the first part of February until the last of May, 1921, I saw him four or five times a day. He was a patient in my hospital and in going to my room I had to pass by his, and the door was a good deal open and I saw him there. I saw him two or three times in June, 1921. I saw him in either the last days of April or the first

(Deposition of Major W. S. Bentley.)

days of May, 1923, here in Great Falls, and again to-day. As the admitting and discharging officer at Asbury Hospital, I saw all patients when they came in and when they went out, and any one that was of particular interest, I would keep tab on him while he was in the hospital. That was true of McGovern's case.

Q. State just what physical and mental condition you observed in McGovern while at the Asbury Hospital?

Mr. HIGGINS.—Objected to on the ground that it is incompetent and immaterial, being based upon condition of plaintiff subsequent to the 31st day of August, 1919, and at a time when insurance of plaintiff had lapsed; also that it is not shown that the facts about to be testified to by this witness have been [133] submitted to the United States Veterans' Bureau for consideration by them and does not constitute the basis of a disagreement between the Bureau and the plaintiff; also that this witness is not qualified to pass upon the physical condition of plaintiff as alleged in his complaint.

Mr. MOLUMBY.—It is agreed by counsel for plaintiff that the Government may have an objection of the above character to any and all evidence in this deposition submitted.

A. He quite frequently had nervous spells of hysteria. I saw him at all times of the day and night as well, for the reason I had to go by his room. There was considerable talk among the nurses that he was faking and putting on and

(Deposition of Major W. S. Bentley.)

in order to determine, in my own mind, whether that was true or not so I could report the matter to the Commanding Officer who had asked me to observe, for the reason it was a question or not whether they were going to discharge him from the hospital, and on the information I gave him he was not discharged from the hospital. I secured this information by personal contact and personal observation. In regard to these spells, I would notice in passing his room that he would be crying or shaking, sometimes he would be unconscious for a short time and I noticed it at night just the same as in the day-time. I observed him alone many times; took particular pains to watch him when he absolutely knew there was nobody around, particularly myself; this, through a crack in the door; he did not know of my presence; there was nobody else in the room with him. I saw him go into a spell this afternoon. I went down to the place where he lives. We were talking just the same as we are talking now. He was lying on a sofa and all at once, right in the middle of a sentence, he rolled off on the floor and I threw out my foot quick to keep his head from hitting against the table leg and during the hour and a half that I was there, he had three of these spells and one of those spells was brought about by a youngster out on the sidewalk exploding a loud firecracker, and he—just like that, and tumbled over. He just kind of gasped a deep breath and sort of threw up his arms and fell back. These

(Deposition of Major W. S. Bentley.)

spells that he had this afternoon would last from a minute and a half to, I should judge, two minutes, and he came out as if [134] nothing had happened and began talking just as rationally. It didn't seem to have any ill effect upon him, no acceleration of his pulse. I felt his pulse to see whether there was anything abnormal about him, the same as I used to do down in Asbury.

Q. In coming out of these fits, Major, could he or could he not recall what conversation had been going on? How was his mind with reference to whether it was clear or not when he came out?

A. Well, apparently he would go right on, you might say where he left off. I know he did to-day and I recall on other occasions.

Q. Major, what can you say with reference to the condition he is in now and on the occasions of your former observation of him a year or so ago and while he was in the Asbury Hospital?

A. I think he had more frequent spells, from the two occasions that I have seen him in the last few months. I cannot answer the question how many spells he had a day while a patient at Asbury Hospital, for he might have had many in the hospital that I didn't see. I never observed him while he was in Asbury Hospital having more than one fit at a time. I never saw a succession, one after the other, like I did to-day. I wouldn't say that he had one a day at Asbury Hospital but I would say that he had three or four a week, that I observed. Something of an emotional nature

(Deposition of Major W. S. Bentley.)

or shock of news or anything that would tend to excite, or something of joy, usually brought on these spells.

Q. Major, from your own observation in taking care of plaintiff while he was a patient at Asbury Hospital, what was his mental attitude toward his own disability?

Mr. HIGGINS.—Objected to, as the mental attitude of the plaintiff would not be determinative of any issues in this case.

A. He worried a great deal to himself; he talked more about getting well and getting back on the job again, as a mining engineer, and often he used this expression: "To hell with compensation; let me get back on the job again and I will earn several times what the compensation will amount to." He used that expression many times. Regarding my experience to observe mental cases, I was [135] surgeon in charge of the South Dakota Soldiers' Home Hospital for three years and we had quite a good many mental cases there; I was a member of the Insanity Board for ten years and sat on those cases; during the nine months in Asbury Hospital I used to have a good deal of those mental cases for the reason that I had an adaptability for handling the men and could get them to do things that the other officers could not. I transferred a number of patients to the Mental Hospital at Marion, Indiana, for the reason that they thought I could handle those cases better than others.

(Deposition of Major W. S. Bentley.)

Q. Major, in your opinion, what is the disability that the plaintiff has?

Mr. HIGGINS.—We object, first, on the ground that the witness has not proved himself an expert, not qualified to answer; secondly, the question is too general, indefinite and ambiguous, and not phrased in such a fashion to be determinative of the issues in this case.

A. Why at the present time he has a hysteria. He has been troubled with this hysteria since my first observation of him in Asbury Hospital. As to whether or not plaintiff is faking these hysterical fits, as I stated before, I particularly went into that question, not only for my own satisfaction but as I was requested to do by the Commanding Officer of the institution of which I was an officer and I am satisfied he was not faking in any shape, manner or form.

Q. Major, what is your opinion as to whether or not the plaintiff is totally and permanently disabled?

Mr. HIGGINS.—We object, on the ground that the question is not properly phrased, the issues here being whether or not the plaintiff is permanently and totally disabled from continuously carrying on any substantial, gainful occupation and the probability that it will so continue throughout life.

A. He has been ever since I have known him and is wholly unable to do any work in a gainful way whereby he can make a living at the present

(Deposition of Major W. S. Bentley.)

time, the same as he was two years ago, and I see no hopes at this time where he is getting any better.

Q. What is your opinion, Major, as to whether or not the plaintiff is now or has been since you first observed, able to follow a substantially gainful occupation? [136]

Mr. HIGGINS.—Objected to, on the grounds stated to the previous question.

A. He has not been.

Q. What is your opinion, Major, as to whether or not it is reasonable to suppose that this inability to follow a substantial gainful occupation will exist in the future throughout his lifetime.

Mr. HIGGINS.—Objected to, upon the grounds heretofore interposed to the questions propounded to this witness, and on the further ground that the question is suppositious.

A. From observation in the past, of men of his age, the majority have not recovered sufficiently to pursue a gainful occupation. I would think this would be true in his case. I have become familiar with what is known as compensationitis or compensation hysteria. I have formed the opinion that plaintiff is not suffering from this disease or ailment. This, for several reasons: First, the getting his compensation has been his least trouble. As I stated before, he did not care anything about compensation. All he wanted to do was to get well where he could go back on the job and get

(Deposition of Major W. S. Bentley.)

work; and when people would offer him money he would absolutely refuse to take it and make the same remarks: "I don't want money; I am no pauper; I want to get well and get to work."

Q. Has there been anything in your observation of McGovern which would show you the extent of his will-power, Major? A. Yes, sir.

Q. Will you state what that was?

Mr. HIGGINS.—We object, on the grounds that the examination of this witness shows that it isn't being endeavored to be demonstrated that the plaintiff is suffering from any mental disorder. Any questioning along this line would be incompetent, irrelevant and immaterial and outside of the issues in this case.

A. Why, the nurse used to place a sedative on his stand and he was directed to take it and he refused and wouldn't take it, and I frequently—he has called me in and he would say; "Major, there is some verinol a nurse would ask me to [137] take and I refused. I don't want to take it because I don't want to be a dope fiend," and when I would go out in the morning he would be watching and say, "It is still there," and I would go in many a time and find that to be true. Verinol is a habit-forming drug.

Q. Do you know whether or not McGovern had previously been addicted to the use of verinol or other drugs. A. I had.

Q. Do you know where he acquired that habit?

Mr. HIGGINS.—That is objected to, nothing in

(Deposition of Major W. S. Bentley.)

the pleadings alleging that this plaintiff has been disabled by the use of drugs or that the Government in any way contributed to any habit of that kind that he may have formed, and any answer to this question would bring up matters outside the issues in this case.

A. McGovern told me on numerous occasions that he had been given drugs in other Government hospitals and he said that he did not propose to take any more, and on one occasion he was reported as obstructing medical treatment, and when the matter was investigated it was found that he had refused to take verinol and the nurse had reported.

Mr. HIGGINS.—It is moved that the answer be stricken on the ground that it is hearsay and purely self-serving.

Q. Major, in your experience as a physician and surgeon, and in your experience with mental diseases and hysteria cases, such as this, what can you say as to the probability of tuberculosis being a contributory cause to hysteria?

Mr. HIGGINS.—Objected to, as the witness has not qualified himself as a tuberculosis specialist, nor has he testified that he made any examination of the plaintiff to determine whether or not plaintiff had ever, or is now, or at any time, suffered from tuberculosis.

A. Why, from my observation of tuberculosis, which I have seen many of them, both in private practice and while I was in the state service and the Government service, a great many of those

(Deposition of Major W. S. Bentley.)

tubercular patients become hysterical, caused from fretting so much about their condition, and one of the medical authorities, [138] which is a standard work, "George and Peterson," makes a plain statement that phthisis is another synonym for tuberculosis as a cause of hysteria. I have never examined McGovern to discover if he was or had been suffering from tuberculosis.

Q. Doctor, in any of the hysteria spells or fits which you have observed the plaintiff in, did he, while unconscious, ever talk of anything in his past experience?

Mr. HIGGINS.—That is objected to on the ground that it is suggestive and leading and prompting,—the witness heretofore having testified to all the characteristics of these fits.

A. He did.

Q. State what he had to say on such occasions.

A. He stated that while he was in the United States service on a sub-chaser that the shock that he received there that he had never gotten over it and he never was the same, his nerves were all shattered.

Mr. HIGGINS.—It is moved now that the answer be stricken as not responsive to the question and embodies only a self-serving declaration.

A. In these fits and while unconscious, he would talk as though he was back to the days when he was in the service.

Q. What did he talk about and say?

Mr. HIGGINS.—Objected to as being incompetent, irrelevant and immaterial.

(Deposition of Major W. S. Bentley.)

A. The severe shock received while on the sub-chasers.

Mr. HIGGINS.—It is moved that the answer be stricken as being ambiguous and not responsive.

Q. Just what do you mean “the severe shock he received”?

Mr. HIGGINS.—We object, nothing in the answer of the witness to indicate more than he has stated. Any further answer would be purely conjectural.

Q. What I am getting at, Major, whether he talked about anything back in the service? [139]

A. He just simply spoke of when he was in those sub-chasers that he would get very nervous and sometimes get sick at his stomach and shake all over.

Mr. HIGGINS.—Move to strike that out as not responsive to the question.

Q. I will ask you, Major, whether or not, from your experience as a physician and surgeon it is customary or likely for one suffering from hysteria fits to revert back to the cause of his hysteria while in one of those fits, in his conversations or actions?

Mr. HIGGINS.—Objected to as being incompetent, irrelevant and immaterial, having no specific bearing on this case, being too general in its terms,

A. Yes, it is often the case.

Q. In your observation of McGovern, Major, did he ever, while having one of those fits, relate to any particular event that you observed?

Mr. HIGGINS.—Objected to as incompetent,

(Deposition of Major W. S. Bentley.)

irrelevant and immaterial, having no bearing on any of the issues in this case? A. Yes.

Q. What particular event did he relate, if any?

Mr. HIGGINS.—Objected to on the same grounds.

A. Why, while on duty on the sub-chasers that he would get nervous and excited and sick.

Q. Major, does toxic poisoning, in your opinion, which results from tuberculosis, in any way effect the nervous system?

Mr. HIGGINS.—We object on the ground that it is incompetent, irrelevant and immaterial, being repetitious, the same matter having been inquired of previously. A. Yes.

Q. In your opinion will a nervous shock or nervous strain cause hysteria such as you have testified the plaintiff here has?

Mr. HIGGINS.—That is objected to because no ground or foundation has been laid upon which to premise any such question, it not having been proved that the plaintiff ever did suffer from any shock from any cause, particularly not in the service of the United States. A. Yes. [140]

Q. Assuming, Doctor, that a man is informed by physicians and doctors that he has tuberculosis, whether he has or has not that disease, is it possible that the brooding on that subject would, in itself, cause hysteria of such a type as you have testified the plaintiff has?

Mr. HIGGINS.—That is objected to on the ground and for the reason it has not been shown

(Deposition of Major W. S. Bentley.)

anywhere in the testimony of any witness in this case that the plaintiff was brooding or so thinking, but, on the contrary, the plaintiff was insistent that he was suffering from some disorder when informed on the contrary that he was not.

A. Yes.

Cross-examination by Mr. HIGGINS.

I am not a neuro-psychiatrist.

Q. You are just what is known as a plain everyday physician and surgeon?

A. Yes. I qualify with saying that I have had the experience that I have stated, with training along the lines of which I spoke, the experience. I think that compensation hysteria or pensionitis or compensationitis is a recognized condition in medicine. It has been a condition particularly recognized since the war. It might be comparable to a condition known as railway spine.

Q. And when a person is suffering from compensation hysteria, that is curable, is it not, by removing the cause of the hysteria?

A. If it is compensation hysteria, yes, but if it isn't, no. They may be mistaken in the diagnosis.

Q. But if the diagnosis is correct in that it is compensationitis or compensation hysteria, it is curable? A. In many cases, yes.

Q. In all cases, isn't it?

A. Well, I wouldn't say that it was in all cases.

Q. But in practically all cases?

A. I have known of a good many cases that have been diagnosed as compensation hysteria and they

(Deposition of Major W. S. Bentley.)

have gotten their compensation and they were no better than they were before. [141]

Q. You do not agree then, Doctor, with the testimony of the neuro-psychiatrists in this case when they say that when the cause of compensation hysteria is removed that the one suffering begins to show an improvement and eventually recovers?

Mr. DAVIDSON.—To which question plaintiff objects on the ground and for the reason that it is not shown that this witness has any knowledge of such testimony being introduced in this case and that the question presupposes such a knowledge of testimony on the part of the witness.

A. I based my opinion—

Q. Will you answer the question, please?

A. That is what I am going to do.

Q. Without making a stump speech of it.

A. No, I am not going to make a stump speech, but I will answer it in my own way or else won't answer it at all. I base my opinion from personal contact and observation of men whose records have been diagnosed as compensation hysteria and award of compensation having been made and no improvement whatever was made in the complaint.

Q. You mean that you do or do not agree with these neuro-psychiatrists who have testified in this case?

Mr. DAVIDSON.—To which plaintiff objects on the ground and for the reason that it is not shown that the plaintiff has any knowledge of the

(Deposition of Major W. S. Bentley.)

testimony which was submitted in this case by any neuro-psychiatrists on which this question is based.

A. I base my opinion on the evidence given in each case that I have come in contact with.

Mr. HIGGINS.—It is moved that the answer to this last question and to the previous question be stricken as not responsive and evasive.

Q. Have you ever discussed the matter of the condition of this plaintiff with Dr. Michaels?

A. Not for about two years. I have never discussed it with Dr. Josewich. I was the admitting and discharging officer and had charge of the help patient clinic in the Asbury Hospital. Dr. Michaels was the neuro-psychiatrist and Dr. [142] Josewich held the position of T. B. in that hospital. I never did give this plaintiff a physical examination. There was no record made of what I have testified to in this deposition, nor was any such sent by me to the Bureau of War Risk Insurance of the United States Veterans' Bureau.

Q. Doctor, if a case of compensation hysteria is correctly diagnosed, isn't that case curable?

Mr. DAVIDSON.—Objected to on the ground and for the reason that the question is merely a repetition, having been previously answered by the witness.

Mr. HIGGINS.—This is cross-examination.

A. Not in all cases.

Q. In other words then, Doctor, you do not agree with the neuro-psychiatrists that have testified in this case, if they have testified that such cases are curable?

(Deposition of Major W. S. Bentley.)

A. I will say the same as I did before that you have got to base your information on each individual case; the case by itself, and not on any general statement. The nurses at Asbury Hospital reported to the Commanding Officer in charge and also to me, their opinion that plaintiff, while there as a patient, was faking when going into these fits. I don't know whether or not this opinion of the nurses was reported to the neuro-psychiatrists of the hospital.

Q. Wouldn't they be the proper ones to report a matter of that kind, coming within their specialty? A. It might and it might not.

Q. Why might it not?

A. For the reason he probably saw the man once a week and I saw him several times a day.

Q. You don't think then, that that should have been reported to the neuro-psychiatrist so that he could pass upon the matter, a matter embodying his specialty?

A. I will answer that in this way, that the man that has the facilities of observing a man several times a day certainly can form a better opinion than a man who sees him once a week. [143]

Q. You think then, Doctor, that your opinion in this matter is superior to that of the neuro-psychiatrist? A. I didn't say so.

Q. Then you don't think it is superior?

A. I didn't say that.

Q. What did you say about it?

A. I just answered the question.

(Deposition of Major W. S. Bentley.)

Q. Now, in your diagnosis of plaintiff's condition and particularly with relation to its permanency, you say that you base your opinion largely because he has made the remark about "to hell with compensation," or words to that effect, and that he would like to get on his feet and get back to work as a mining engineer?

A. Yes, for the reason that these men that have been correctly diagnosed as compensation hysterics are always talking about the compensation, and he never was. I do not know what plaintiff said about compensation to the neuro-psychiatrists who examined him.

Q. And supposing, Doctor, that in his conversation with the neuro-psychiatrists, he emphasized the fact that he was in debt and couldn't get out of debt without the assistance of compensation and that to them his dominant desire seemed to be to get compensation, what then would be your opinion?

A. He never made any such remark as that to me.

Q. I know he didn't make it to you, but I am asking you a question basing it upon what he may have said or did say to others.

A. I would form my opinion on what he told me and not on what he told others.

Q. In other words then, Doctor, you do not desire to answer the question?

A. Why, I am not trying to evade the question in any way.

(Deposition of Major W. S. Bentley.)

Q. Would you alter, Doctor, your opinion in this case if you knew that plaintiff in his remarks to a neuro-psychiatrist and to at least one other doctor that examined him, stated that he was in debt and needed money badly and had to have compensation, and in their opinion, his main desire seemed to be to get compensation, [144] and further, that he said recently, that is, the day after this hearing before Judge Bourquin, that he would die unless he got compensation?

Mr. DAVIDSON.—To which question plaintiff objects on the ground and for the reason that it is not a question founded upon any testimony of record in this case and is asking the witness for an opinion on a supposition of facts not founded upon the evidence in this case, and for the further reason that the question is ambiguous and unintelligible.

A. In this particular case I wouldn't change my opinion.

Q. Would you change your opinion, Doctor, if it were true that when this plaintiff was examined by Dr. Josewich for tuberculosis and was informed by Josewich that he did not have tuberculosis, and three days thereafter this plaintiff exhibited signs of hysteria and was then turned over to a neuro-psychiatrist?

A. No. I wouldn't change my opinion in this case, no.

Q. In other words then, that would not give you the impression, when the plaintiff was informed by the tuberculosis specialist, as he was, that he did

(Deposition of Major W. S. Bentley.)

not have tuberculosis, that he then, in his desire to get compensation became hysterical?

Mr. DAVIDSON.—That question is objected to on the ground that it is ambiguous and unintelligible.

A. The damage to his nervous system was done long before Josewich made his examination and found his case was arrested.

Mr. HIGGINS.—We move that the answer be stricken as being evasive and not responsive and not based upon the facts in the case.

A. Plaintiff is suffering with hysteria. Hysteria is not psychosis, but it is a mental condition. Hysteria is a nervous condition. Plaintiff was discharged from Asbury Hospital at his own request.

Q. Then his reason was not affected?

A. I don't quite get at the meaning of that. He wasn't insane, no, if that is what you mean by reason. I am familiar with the rating schedule adopted by the United States Veterans' Bureau. As to what is the highest rating that can be given for hysteria, I would refer you to the rating table. I am not permitted to [145] state that out in an unofficial way. I would not be surprised to learn that the highest rating would be total temporary, rather than total permanent. There are lots of these cases that have a sliding scale. I wouldn't say that I know that hysteria is never rated as permanent and total disability by this schedule rating. As to plaintiff's rating while in Asbury Hospital, it wasn't the sphere of any man in As-

(Deposition of Major W. S. Bentley.)

bury Hospital to rate any man, he was rated by the rating section.

Q. Was he diagnosed by any doctor, as hysterical, in that hospital?

A. I don't know if it was put on his record or not. I never paid any attention to his rating.

Q. Isn't it the duty, Doctor, of the examining physician in the hospital, to call to the attention of the central office any disability of total degree which may be rated as permanent and total under the rating schedule?

A. Now, I cannot very well answer that by yes or no, but I could tell you what I know about it.

Q. You either know or you don't know, Doctor.

A. You cannot always answer everything by yes or no.

Q. This is one time that you can.

A. I was not the medical officer in charge of Asbury Hospital and was not consulted about such cases. I presume that I read the hospital or clinical record of plaintiff at the time of his discharge from the Asbury Hospital, but I don't recall what it was at this time.

Q. Did you notice any notation thereon of permanent and total disability?

A. I don't recall whether it was on there or not. I was discharging a number of cases every day and that is something that I wasn't concerned in and I did not notice it.

Q. Did you know that McGovern gives his earning capacity as a mining engineer at \$100.00 a month prior to the time he entered the services?

(Deposition of Major W. S. Bentley.)

Mr. MOLUMBY.—I interpose an objection to that as not having been in evidence. The fact of the matter is the statement, which he said was in the year preceding his entry into the navy, he averaged \$100.00 a month for that year. It does not state that he worked every month for \$100.00 a month. [146]

Q. Accepting the correction of counsel for the statement, would you say that you knew or did not know that, Doctor?

A. I never knew what he got. I don't think plaintiff got any compensation while he was hospitalized at Asbury Hospital. The compensation rate for total temporary is \$80.00 a month. It is customary for the bureau to pay temporary total disability to a man hospitalized for compensable disability, but they don't do it in all cases.

Q. Do you know any cases where they don't do it without violating the rules and regulations of the bureau?

A. There was a whole lot of them in Asbury Hospital while I was there that were not getting their \$80.00 a month. Eighty dollars is total temporary disability compensation. It is what they call hospital pay.

Q. And the patient gets free room, free medical treatment, free meals, and if McGovern only made \$100.00 a month before he went into the service and he got \$80.00 a month and free room and board in the hospital he was getting more than he got, at least on an average, before he went into the service?

(Deposition of Major W. S. Bentley.)

Mr. MOLUMBY.—Objected to on the ground that it is assuming a fact that is not in evidence and stating the fact regarding the pay that he did get before entering the navy, and is not proper cross.

A. I will answer that question in this way, that the records in Washington will show what he got while he was in the hospital.

Q. Well, if he got that \$80.00 a month and free board and room, it would be rather peculiar, wouldn't it, for him to really want to get out so as to get back to work and earn money, as you testified?

Mr. MOLUMBY.—Objected to as being too speculative and too immaterial and irrelevant in this case; not proper cross-examination for that reason.

A. I didn't prescribe it, I could not say how much verinol was ordered for McGovern to take.

Q. You were interested in his case, you stepped in to see him. A. I certainly did, yes. [147]

Q. And you never asked him, when they told him they wanted him to take verinol?

A. It was not my business.

Q. You were investigating for the Bureau the condition that the patient was in?

A. I wasn't investigating for the Bureau, I was investigating for the Commanding Officer of the Hospital. I certainly did not ascertain how much verinol he was required to take. His doctor in charge prescribed a dose for him and it was none of my business and I wouldn't pry into it. It was not a matter where I was investigating a dose at

(Deposition of Major W. S. Bentley.)

all. I stated so, and McGovern did tell me he had taken verinol previously. That was at—I have forgotten the name of the institution, but it was just across the way—Minneapolis Sanitarium.

Q. Do you think that had anything to do with his hysteria? A. Certainly would aggravate it.

Q. That was about two months before you say he got that; when did he get this other verinol?

A. Why, he came right from the Minneapolis Sanitarium, right to the Asbury.

Q. And how long before?

A. He was just fetched across the street and fetched in the Asbury Hospital. I don't know how long he had been in the Minneapolis Sanitarium. I haven't the least idea. In fact, I never knew anything about what hospitals he had been in except that one prior to his coming to Asbury. Oh, no, he was not in that hospital since his discharge. I said that tuberculosis would be a contributing factor to hysteria, and George & Peterson says so too. It might be active or inactive tuberculosis.

Q. Now, as a matter of fact, Doctor, isn't hysteria a contributing factor to a tubercular condition, rather than a tubercular condition being a contributing factor to hysteria? A. Not exactly, no.

Q. Hysteria would have a tendency to weaken the resistance of the afflicted person to the encroachment of tuberculosis, wouldn't it?

A. Why, it might. [148]

Q. In fact, it would, wouldn't it, if the afflicted person had a tendency to tuberculosis?

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A. The usual case, if a person gets tuberculosis and gets worrying about it, he gets hysteria.

Q. Accepting your statement, Doctor, which is not responsive to the question if the tubercular condition is removed the hysteria ought to improve?

A. Not in all cases.

Q. What would you say, in most or in least?

A. In lots of cases they remain hysterical.

Q. In other words, you don't want to answer the question, Doctor?

A. No, not necessarily, I don't say that at all.

Q. How much does McGovern weigh at the present time? A. I didn't weigh him.

Q. He weighs over two hundred pounds, doesn't he? A. I don't know; I wouldn't say.

Q. He is as large a man as I am, isn't he? In fact, taller than I am, isn't he?

A. I wouldn't say; I judge he is about as large as you.

Q. Giving my weight as about two hundred and six pounds, Doctor, would you say that McGovern weighs that much?

A. Sometimes a person's flesh is very flabby and looks to weigh quite a bit and it is soft and so on. I don't know what he weighed in Asbury Hospital. I don't recall whether he was of the same size then as he is now.

Q. Are you familiar, Doctor, with the rating schedules of other nations besides the United States?

Mr. MOLUMBY.—That is objected to as abso-

(Deposition of Major W. S. Bentley.)

lutely immaterial; has nothing to do with this case; improper cross-examination, not having been gone into on direct.

A. The rating schedule that was used was one that was made up by our own department, and that is what we used, and we weren't told in the rating section what other nations were using. It was made up by a committee and we were to use that.

Q. Don't you know that the basis and foundation of the rating schedule as adopted [149] by the United States was that of the rating schedules of other nations, but on the part of our country with more liberal conditions?

Mr. MOLUMBY.—Objected to for the same reason it has nothing to do with this case. The man has not served in any army except the United States.

A. I have heard reports of that kind, but I don't know of my own knowledge.

Q. Do you know, Doctor, that France, one of the first nations to get into the war, has abandoned the giving of compensation to those afflicted with hysteria and no longer recognize that as a compensable malady?

Mr. MOLUMBY.—Objected to for the same reason; not properly qualified, and maybe because France hasn't got the money to pay them and maybe a thousand other reasons; not a proper question and not proper cross, and objected to on the grounds stated in the preceding question.

A. I haven't received any notice of that condition

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from Bureau reports. I try to keep up with the progress of medicine, particularly those matters concerning my particular branch of medicine.

Q. And your particular employment; and you say that you never have learned that?

A. I have never received any official communication from the Bureau to that effect.

Q. Have you ever read it anywhere else?

A. I have read it in the newspapers and some medical journals.

Redirect Examination by Mr. MOLUMBY.

Q. Doctor, in your opinion would financial worries be a contributing cause to the malady of hysteria?

Mr. HIGGINS.—That is objected to as being improper rebuttal and directly in conflict with the testimony of this witness in chief, that plaintiff was not suffering from financial worries but only with a desire to be cured and returned to work.

A. It would.

DEPOSITION OF HERBERT H. McGOVERN,
JR., FOR PLAINTIFF.

Taken on the 6th day of July, 1923, at Great Falls, Montana, before P. C. Silk, a notary public for the state of Montana, by stipulation [150] between counsel that the same may be considered as part of the testimony in this action, subject to the law respecting admissibility of testimony.

(Deposition of Herbert H. McGovern, Jr.)

HERBERT HUGH McGOVERN, Jr., being called as a witness in his own behalf, and being duly sworn, testified as follows:

Direct Examination by Mr. MOLUMBY.

My name is Herbert Hugh McGovern, Jr. I am thirty-three years old. My home has been in Great Falls, Montana, for about ten months. Previous to that it was at Kalispell, Montana. I have been a resident of Montana off and on for about thirty years. I was born in Minnesota. At the time this action was started, my home was in Kalispell. Except for the time I have been in the hospital since getting out of the navy, my home has been all over the United States. I was in the naval service of the Government during the war. I enlisted the first part of June, 1917, and was discharged in October, 1918. I was located at Woodman, Colorado, at the time I was discharged. My discharge reads from Fort Lyons Sanitarium. Prior to my discharge from the navy I was hospitalized, first at New London, Connecticut and from there I was sent to Eastern Point, Connecticut. I was sent there because there was too much noise at the base hospital for me, that is a base hospital at Eastern Point. Next I went to Polytechnic, New York. I was in the hospital there. From there I was sent to Fort Lyons, Colorado, and hospitalized at the Fort Lyons hospital. They couldn't treat me as they should there and they sent me to Woodman, Colorado. That is where I was discharged from on my own request. The doctors didn't want me to. I was

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discharged from the navy at my own request before the Armistice was signed. I don't know what date I went to New London, Connecticut. Prior to that time I was on board the ship S. C. 42. That was a sub-chaser. Considerable happened on board ship to incapacitate me. I was holding two jobs. My rating was machinist first class. I was holding down chief though my rating was machinist mate first class. I had absolute charge of the engine-room and all mechanical appliances, and the dropping of depth [151] bombs, raising the stern of the boat out of the water every time they went over. The decks were leaky from the dropping of bombs and let the salt water in through the storage batteries. The combination of salt water and sulphuric acid in salt water forms a very poisonous gas. Considerable time prior to which I realized what was going on, I could not tell anything about it. I got into that gas and inhaled some of it. Yes, considerable. The doctors said the effect of it was T. B. It made me unconscious and semi-conscious. I don't know for how long. That has been a long time ago. There were other fellows in the engine-room. They were affected in the same way; Had-dick, machinist mate, second class, died from it. As to whether, at that time, we were going across towards France or coming back this way I will tell you Loy, we had sealed orders all the time and I don't know where we set out, somewhere on the Atlantic. After that I was brought back to this country. There is a period there I don't know anything

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about. I don't know whether I was treated on board ship. There was no ship doctor. I was treated for T. B. at the hospital at New London, Connecticut. I was always given a private room on account of my nerves. The nerves were in such a condition I couldn't sleep and I had to have it where it was quiet. I would go to pieces. The other fellows were in the wards. After leaving these hospitals and prior to discharge I was treated for my nerves in addition to T. B. I was put in the Eastern Point Hospital for that purpose and at Fort Lyons they gave me a little bungalow all by myself, and at Woodman, Colorado, I had a room first, and then I got on my feet, and they gave me a little hut all by myself. After my discharge I had a bunch of money and I was nervous; I would get on a train and get off at a station and look around the station and then get the next train out. I was in several hospitals out of my own pocket, such as Kansas City, Missouri. It was St. Luke's. In Kansas City I had a fainting spell on the street. I woke up in jail. I explained to the officer and they took me to the hospital. I was at St Luke's about three weeks or a month and they put me on the train and shipped me to Portland, Oregon. I was not in a hospital in Portland, until some time later. I was in bed at the home of my sister. In Portland I began [152] to get disgusted with the Government doctors and I had my sister take care of me. As soon as I was discharged I put in my claim for

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compensation; that was not at Fort Lyons, but at Portland, Oregon. They wrote and asked me when I died. They seemed to have listed me as being dead at that time; they wrote back and asked me when I died. From Portland I went up to W. E. Pierce's summer home. He had fifteen hundred acres at Hot Springs and I went up there and took treatments that summer. Then I returned to Portland and from there went to Los Angeles and it was about New Years that I landed at the Soldiers' Home Hospital. It was called the National Soldiers' Home of California situated at Sawtelle; there is a postoffice there; you can reach it by the National Soldiers' Home. I was there until spring. I was sent there by the Government and was under the care of the Government; they took care of a bunch of veterans there. They listed me T. B. It didn't bother me much though there was signs of it. An X-ray showed up on the right upper lobe quite a spot; it rattled a little bit but they said it was my nerves more than anything else. I was at Sawtelle from about New Years to the last of February, 1919, or 1920, it must have been. I went down to San Diego. They said there was no fog down there and I thought I could improve better down there. I don't know the name of the hospital down there. From San Diego I returned to Portland, Oregon and was in St. Vincent's hospital for a few days under Government jurisdiction and went from there to Spokane, and woke up one morning about ten o'clock, and when I came to I

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was in Fort Wright hospital. I don't know how I happened to get into that hospital. I was under the care of the army there. I don't remember the names of the doctors who took care of me. It was the head doctor of the hospital. While there, I saw Dr. Price twice. I had a slight examination by him once and I was in the Sacred Heart, Spokane, when he examined me. They moved me in and Doctor Price examined me there, and I came over to Montana to my father's logging camp, and I got news that I was broke to twelve dollars per month. I had been receiving \$80.00. I was over in Montana awhile. As soon as I received this notice I went in for vocational training. I went in to see Dr. Price but he wouldn't let me take vocational [153] training. He said my health would not permit it. Then I returned to Montana. After coming back to Montana I was put in the hospital at Kalispell for three days and never saw a doctor and they were strict there. They would not let me smoke cigarettes while there. From there I came to Great Falls and was in the Columbus Hospital. I was examined by Dr. Southmayd and he give me T. B. and nerves and said my heart was a little off. I was sent to Columbus Hospital on the request of Dr. Southmayd to be treated for T. B. I had been living where I was quiet, on the lake, and they let me out. At the hospital they took me out of the ward after I had been there for two hours and give me a private room and from there I was sent to Thomas Hospital, Minneapolis, Min-

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nesota. I had a bunch of fainting spells. They first insisted on putting me in a room or in a ward and would not let me out of bed. The nurses didn't like to take care of me, and they sent me to St. Barnabas Hospital, and I asked for a doctor and they said they wanted to give me a shot of hop and I had some fainting spells there that night and the next morning they railroaded me to the Minneapolis Sanitarium, where my mind was as good as it is to-day and four men grabbed me and put me in a strait-jacket and manacled me, and beat hell out of me. After a while I came to. While I was in Thomas Hospital and St. Barnabas Hospital I was under the care of that big T. B. doctor. I was examined by Dr. Josewich. Dr. Josewich's examinations goes against the other examinations previously. As to Dr. Josewich specialty, I never knew he specialized in much of anything. As to the sort of examination he gave me, the last examination he gave me he came in and talked to me and went out. He never touched me. I was sent from the St. Barnabas to the Minneapolis Sanitarium on the orders of Dr. Michael. Dr. Michael gave me just a brief examination one morning. It must have been around a couple of months that I was at the Minneapolis Sanitarium. It happened that I was transferred from the Minneapolis Sanitarium to the Asbury Hospital, I told them the kind of treatment I was getting. Dr. Michael had supervision over me after I was transferred from the Minneapolis Sanitarium to the Asbury Hospital,

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though I saw Dr. Bentley. Dr. Bentley had charge of the Government end of the [154] hospital. I saw him four or five times a day and in the evening a couple of hours. I saw Dr. Michaels perhaps three times a week; twenty minutes at a time during those times. I was treated for nerves at the Asbury Hospital and at the Minneapolis Sanitarium. I was at the Asbury Hospital altogether about five months. Then they sent me out to Lake Minnetonka. They gave me a cook to cook for me. I thought if I could be quiet out there I would get better, but the weather got so hot they sent me back to Kalispell, Montana, my home, at that time where my folks were living. Since then I have not been hospitalized. Both winters I have been confined to bed all winter. I stayed around Kalispell that summer. The next winter I was in bed all winter and that summer before I was at Kalispell and this winter I was in bed at Great Falls. I have been in Great Falls ever since. The fainting spells I spoke of first occurred at the base hospital, New London, Connecticut. I have been having them ever since. That was when I was first in the hospital. It was when I was able to be up and around. As to the frequency of those fainting spells, it used to be just when some big noise or excitement or something like that came up I would have them. Now, I go over any old time. I have from two to fifteen a day now. They last from sometimes a couple of minutes up to hours. They have been continuing that way since I guess in May, 1918, yes, in May, 1918.

(Deposition of Herbert H. McGovern, Jr.)

That was prior to my discharge from the navy. Nervousness, excitement, especially. Any sudden joy or fear or exhaustion brings on a spell of that kind. I have not earned a dollar since my discharge from the navy. As to work, I tried little things and usually I walked off without them being done, either that or a fainting spell. I put in an application for compensation and insurance money. It was some time in October, 1918. I have been drawing temporary total compensation of \$80.00 a month since May, 1922. At that time I was broke. I was on my back and I had to be fed and had to have my hands lifted. By being broke I mean the compensation was taken away from me. They lowered the compensation to \$8.00 and then I was raised to \$40.00. Since my discharge up to May, 1922, I drew \$80.00 and since then I have drawn \$40.00. Since last October I have been rated to [155] \$100.00, but I have not received any of it. A permanent total rating is required before you can draw \$100.00. I am now rated permanent total. That dates back to October, 1922. Before entering the navy my occupation was mining engineer, bonding. I am a graduate of the Oregon State College and of the La Conner High School in northern Washington. Before entering the navy my health was excellent. I was never sick. I was never hospitalized for any purpose. I never received medical treatment of any kind. While going to college. I participated in swimming, basket-ball and football. I received seven letters all told. I

(Deposition of Herbert H. McGovern, Jr.)

have absolutely no warning when these spells come on. While in them I know nothing that happens. After one of them is over I feel weak and shaky. While having one of these long fainting spells I do not know what transpires or what I do. While on board the sub-chaser S. C. 42 I was engaged in sounding and convoying, just as much service as if out on the sea. We dropped a lot of depth bombs. We were flagship of a fleet of five. I do not know definitely whether that fleet at any time sunk any submarines. The Y gun that shoots off the bombs was located over my quarters. This Y gun shoots two depth bombs from opposite sides at a time. The jar of that gun is tremendous. At the same time they roll one over the stern. These depth bombs are three hundred pounds of T. N. T. which sink to a depth of a decimeter. They explode under water. A water-spout will come up two hundred feet in the air from it. Dropping these bombs affected my nerves. There was a tremendous jar. On board ship I had charge of the engine-room and all mechanical appliances. That is above the level of the water but below the deck of the water. There is only one depth to a boat. It is possible in the engine-room to tell if a submarine is near. You put your ear to the side of the boat and you can tell what the size of the boat is, in your vicinity. You can tell approximately whether there is more than one submarine in the immediate neighborhood. The different churns of

(Deposition of Herbert H. McGovern, Jr.)

the submarine is about the same as different tones of different bells. [156]

Cross-examination by Mr. HIGGINS.

I enlisted at the Puget Sound Navy Yards, Seattle, Washington, and was in training there over a year. My first and only service was on a sub-chaser. My disability came from a leak in the boat and entry of salt water. The combination of salt water with a chemical created some gas and I inhaled the gas. I have had considerable correspondence with the United States Veterans' Bureau.

Q. The basis of that correspondence has been the condition of your lungs, has it not?

A. And nerves.

Q. Have you ever written the department concerning the fainting spells you speak of?

A. I have. I have taken it direct to the doctors.

Q. Did you ever write to the Bureau?

A. No, I have handled very little correspondence, myself.

Q. Did you ever keep any copies of letters that you have written the Bureau?

A. My father has all his letters. I was physically examined at the time of my enlistment. I don't recall what my weight was. At the present time, my weight is perhaps a hundred and seventy. I have not weighed recently. I guess it has been a couple of years since I weighed. If you say my weight is nearer two hundred than one hundred and seventy, perhaps you are a better judge than I am. I don't recall what my weight

(Deposition of Herbert H. McGovern, Jr.)

was prior to going into the service. Yes, I was examined by Dr. Price in Spokane, as near as my memory recalls it was him. I don't know whether he was known as a neuro-psychiatrist. I know that his recommendation was that I go to work.

Q. You didn't want to go to work, did you?

A. I didn't want to? I couldn't. I am lucky if I can sit around without being in bed.

Q. You didn't want to go to work, did you? You didn't go to work, did you? [157]

A. I did not. My health would not permit it. I recall Dr. Little and the examination he made on me.

Q. Do you know what his report was concerning your condition?

A. I know his report was very malicious.

Q. You didn't think his report of your condition was correct?

A. I did not. Just afterwards Dr. Southmayd examined me, three days afterwards and found these ailments existed. I remember the examinations made by Dr. Conroy. His diagnosis was not similar to Dr. Little. Dr. Conroy's diagnosis was neurosis and T. B.

Q. Do you know why Dr. Conroy was not called as a witness in the case? A. I do not.

Q. Don't you know the reason he was not called was because he had telephoned that his testimony would be unfavorable to you?

A. I do not. I know I have his reports with

(Deposition of Herbert H. McGovern, Jr.)

his name signed to them. His reports were never submitted to the Bureau, I don't believe.

Q. You were in the hospital for a while during the time Dr. Little was making his examination of you?

A. He didn't make any examination of me while I was in the hospital. I didn't see him. Dr. Little didn't call on me at all while in the hospital, not once.

Q. You take issue with Dr. Little when he says he had you under observation, do you?

A. I went down to see Dr. Little, very briefly, after leaving the hospital.

Q. You remarked to him that his report was going to be unfavorable, didn't you?

A. I was advised so. I complained then against his findings.

Q. You remarked to him that you needed compensation, did you not?

A. I needed assistance. I did not tell him that I had a lot of obligations owing. I did not tell him I was indebted and that I needed the compensation in order to meet my debts. I didn't owe anybody at that time. I did complain to Dr. Little about the fainting spells.

Q. Did you have any fainting spells while in the hospital during the time of Dr. Little's examination?

A. As near as I can remember, I did. [158]

Q. They keep a chart in the hospital of all that happens, do they not?

(Deposition of Herbert H. McGovern, Jr.)

A. They were slack in that hospital. They didn't keep such a chart that I know of. I remember an examination made of me, by Dr. Josewich. The last examination he made of me he came in and talked to me, he didn't examine me at all. I went to him to have my lungs examined. He made an examination of my lungs.

Q. And he told you there was no active tuberculosis?

A. No, but the doctor before him said there was. This doctor from Thomas hospital, Dr. Barclay.

Q. Dr. Josewich said there was no active T. B.?

A. He told me that. As to treatment under Dr. Josewich's observation, I was not under the observation at all of Dr. Josewich.

Q. Three days after you were examined by Dr. Josewich you were removed to another hospital, were you not?

A. The next day I was removed to the asylum.

Q. You made no complaint to Dr. Josewich about these fainting spells, did you?

A. I was so sick I didn't know hardly what was going on. I believe I then came under the care of Dr. Michaels. He is a neuro-psychiatrist.

Q. His diagnosis was you were suffering from hysteria, was it not? A. Mental disorder.

Q. There is nothing the matter with your mentality now, is there?

A. I can't do anything. I can't work mathematics. I have lost all my education. I can't be around people. I have to be quiet.

(Deposition of Herbert H. McGovern, Jr.)

Q. You think clearly, don't you?

A. I haven't got ten per cent of my thinking power I used to have.

Q. You seem to remember events pretty well?

A. Fair.

Q. You understood everything that has gone on during the taking of this deposition, haven't you?

A. As near as I can comprehend I have. [159]

Q. You have been the subject of a good deal of sympathy on the part of friends and others, have you not?

A. I have not. Before enlistment I was making \$100.00 and over a month and expenses. I have had a few physical examinations since September, 1921. Yes, there was active tuberculosis discovered in those physical examinations. Dr. Conroy of Kalispell discovered it.

Q. He was the doctor that was not called to testify in the case?

A. He didn't seem to be. I don't know whether his report was ever submitted to the United States Veterans' Bureau, at Washington, D. C.

Q. So his diagnosis is the only one since September, 1921, wherein it was discovered as active tuberculosis?

A. I had been rated \$8.00 a month when I had the examination. That is only last winter and the fall before this. I was drawing \$8.00 a month for T. B. before that. As to my lungs being alright now, I can't breathe very good.

Q. You don't cough, do you?

(Deposition of Herbert H. McGovern, Jr.)

A. I do, especially in the mornings.

Q. We have been here about an hour and I haven't heard you cough yet.

A. You haven't been listening. I know once distinctly I coughed since you have been here.

Q. You have coughed once in the past hour.

A. In the early morning and afternoon I do. Most every morning when I get up I have a coughing spell.

Q. How long have you been living here in Great Falls this time?

A. I came down shortly after election, the city election—no, I guess, county, or was it city.

Redirect Examination by Mr. MOLUMBY.

Dr. Little is in Kalispell, Montana. I don't know what position he has held in the American Legion. He never came to see me at all while I was at Kalispell. The examinations he made of me were in his office. They lasted ten minutes. He used this instrument over your ears and listened to my lungs, [160] the stethoscope. He never made an X-ray examination of me. I don't remember that he ever gave me any examination except the stethoscope. He did not come to see me during those three days while in the hospital. No doctors came to see me.

Q. Did you ever, at any time, have any trouble with Dr. Little?

A. When I first went down there for an examination he wanted to go down to Flathead Lake to go trap shooting and he got hardboiled on me.

(Deposition of Herbert H. McGovern, Jr.)

He called me a gold-bricker before he examined me. We had an argument at that time. I don't recall what sort of an examination he gave me at that time. He gave me no further examination than what I have just recounted.

Q. On how many occasions has he examined you?

Mr. HIGGINS.—That is objected to as repetition.

A. Two or three times, not over three. I don't know whether Dr. Conroy was subpoenaed in my case. There was no reason I might have had for not calling Dr. Conroy here. Other doctors in Kalispell examined me. Dr. Hueston and Dr. Conroy examined me at the same time. These doctors made out a report that I was totally and permanently disabled and sent it to the Government.

Q. Do you recall what they said in their report sent in to the Government?

Mr. HIGGINS.—That is objected to on the grounds that it is purely hearsay and the report itself is the best evidence.

A. I do not remember definitely whether that report was sent in to the Government. It was made out at my father's request.

Q. And they did make a report in writing, did they?

A. There was a report went at the time Dr. Hueston tried to railroad me to the State Asylum here, at Warm Springs.

Q. What sort of an institution is Warm Springs?

A. An insane asylum.

Mr. HIGGINS.—That is objected to as not having

(Deposition of Herbert H. McGovern, Jr.)

been shown that the report of Dr. Hueston was ever submitted to the Bureau.

A. This report was submitted to the Government. As near as I can remember, Dr. Conroy, at the same time, made an affidavit as to my condition.

Q. Do you know whether or not that was sent in to the Government? [161]

A. As near as I know, it was.

Mr. HIGGINS.—I move to strike that out as hearsay and conjecture.

A. I smoke some. I do not inhale the smoke. The Minneapolis Sanitarium, at the time I was confined there, was a Veterans' Bureau Hospital.

Q. They were supposed to report your condition to the Government, were they not?

A. They were, the Government paid my way there. That was a contract hospital of the Government.

Q. I will ask you if you know whether or not any reports of your condition were ever sent in by the Minneapolis Sanitarium?

A. They said there was.

Mr. HIGGINS.—That is objected to as hearsay.

Recross-examination by Mr. HIGGINS.

Q. Have you ever presented to the bureau, in affidavit form, the matters and things to which you have testified during the time of this deposition.

A. I don't recall that I have myself, my friends have.

Q. As a matter of fact, you never have, have you?

(Testimony of Dr. George E. Price.)

A. I couldn't tell you, I don't remember. My friends have put in numerous—

Mr. HIGGINS.—I move the last answer be stricken out as not responsive. It is purely self-serving.

TESTIMONY OF DR. GEORGE E. PRICE FOR
DEFENDANT.

Thereupon Dr. GEORGE E. PRICE, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. HIGGINS.

My name is George E. Price. I am a physician by profession and live at Spokane. I graduated from the University of Pennsylvania in 1898. I have never taken any other course, but since 1903 I have been specializing in nervous and mental diseases. As such specialist I had occasion to examine the plaintiff. At the time I was consultant for the Public Health Service. I saw [162] plaintiff once, on May 6, 1920. The examination took place at Spokane. It was the usual nervous and mental examination. The examination was sufficiently thorough for me to determine from a medical point of view whether or not the plaintiff was suffering from any nervous indisposition. After this examination, given to this plaintiff, I arrived at the conclusion that he had no organic nervous condition but that he did have hysteria. It is an ailment that might permanently but not totally incapacitate him. It is an indisposi-

(Testimony of Dr. George E. Price.)

tion that will respond to treatment. I observed in the instance of this particular patient why this condition was prevalent. I classed it among the compensation neuroses. That classification is a form of hysteria which we designate as compensation neurosis.

The COURT.—Analyze it.

A. I mean this hysteria may be due to many causes; there is the so-called war hysteria and there is the hysteria of litigation or compensation; I classed this with the latter.

The COURT.—An exciting cause?

A. Yes, sir.

Q. And it is comparable with what class of cases?

A. The case that we see after accidents, where there is a question of compensation after an accident.

Q. As to what is commonly termed a "railroad spine," what would you say?

A. Well there are two; you mean the hysterical railroad spine? Q. Yes, sir.

A. I would say that it is the same group. As to the prognosis concerning this case, the removal of the cause, under proper treatment, the case should recover.

Q. You mean that if this plaintiff knew definitely that he was not going to get any money out of the Government that his ailment would cease?

A. I would rather answer that in another way and say that almost invariably after accident cases, where the claimant receives a compensation in a

(Testimony of Dr. George E. Price.)

lump sum, [163] or where the claim is disallowed, that the claimant recovers very frequently within a comparatively short time without requiring any further medical aid. Pension or compensation neurosis is a recognized condition of the medical profession. One of the men connected with the Veterans' Bureau wrote an article, I think about two years ago, in the Journal of the Medical Association in which he referred to that, to the prevalence of that condition. My recommendation, after examining the plaintiff was this, as I remember it; I said that while I felt that employment would be the best thing for him, I felt further that under the circumstances the best thing would be to send him to a neurologic hospital. I recognize page No. 63 of Plaintiff's Exhibit No. 13. That is over my signature. That shows my conclusions with reference to this plaintiff after my examination of him.

Q. And it reads as follows: "Herbert McGovern; neuro-psychiatric examination; this man presents no signs of mental despond or feeble-mindedness; he has no symptoms of organic or nervous disease; the attacks described by him are typically hysterical, which fact is in harmony with the man's general deportment, longing for attention and craving for sympathy, etc. Diagnosis, hysteria; recommendation: work would be the best form of treatment for this particular case; as this will undoubtedly meet with strenuous opposition I would suggest his being sent to a neurological center for treatment."

(Testimony of Dr. George E. Price.)

A. That was my report to the bureau. I heard the testimony of Mr. Carey, Father Callahan and Herbert H. McGovern, Sr., in this action. I heard only a part of the testimony of Dr. Dora Walker. I didn't hear the testimony of Lola Beller. The symptoms, as shown by the testimony of these witnesses, indicate plaintiff to be very hysterical. After the examination that I have made personally and after listening to the testimony of those witnesses whose names I have given, I would say that plaintiff is totally disabled but not permanently disabled.

Q. Would you say that he is permanently and totally disabled from continuously following a substantially gainful occupation?

A. No, I wouldn't want to answer that; I would say he was totally but not permanently [164] disabled, by virtue of a definite condition—hysteria.

Q. And if the cause of that were removed, which is a desire for compensation or insurance, would the malady be corrected?

A. I would answer in general, not special. I would say that the removal of the cause and under the proper treatment, hysteria is a curable disease. I examined the lungs of the plaintiff only in a general way. I listened to the heart and lungs. I did not find any evidence of tuberculosis. I would like to qualify that answer by saying that the examination was not such a one as should be made for the deduction of slight degrees of tuberculosis; it was out of my province and was done by men who are skilled

(Testimony of Dr. George E. Price.)

in that work. The examination made by me with reference to tuberculosis was not a thorough one.

Cross-examination by Mr. MOLUMBY.

Hysteria is a well-defined disease in medical science. One could not be as badly disabled from hysteria of the type these people have been testifying to as one could be from almost any other cause. I have testified he was totally disabled. Hysteria is not a conceivable injury. I would not say it is not a specific injury. I would say it was a specific clinical entity. It is a disorder of conduct, of personality; there is no evidence of any physical injury. I examined plaintiff on May 6, 1920, on one occasion only, as I remember it. I don't remember whether the examination was in my office or in the hospital. It has been three years ago and if it were not for my record I would not have any clear recollection of the case. I should say the average examination of that character is anywhere from thirty minutes to an hour, the majority over half an hour.

Q. After hearing the testimony here to-day and that you did hear of Mr. Carey and Father Callahan, myself—Mr. Molumby—and the other witnesses that you heard, would you say that the symptoms that they have described were natural symptoms of the disease that you concluded that he had at that time?

A. I would; also I witnessed an attack he had out in the lavatory to-day. I would say that it was like a hysterical attack. When these attacks extend over a long period of time, I would say it was harder

(Testimony of Dr. George E. Price.)

to produce a recovery; I [165] wouldn't say it is doubtful. A lack of recovery is possible but not at all probable.

Q. Is it reasonable to suppose they would not recover to such an extent as to be totally well?

A. That is—I can't answer that yes or no. I would say it would depend entirely, I should judge, on the way the case was handled. Those cases, as long as the condition itself is capitalized or is bringing a financial return, the condition is going to continue. That is the usual history. It is possible that some other exciting cause might exist other than the fact that he was seeking compensation.

Q. The fact that he never did get more than forty dollars and generally got eight dollars, would, in your opinion, seem to be an inciting cause?

Mr. HIGGINS.—We object to that as an incorrect statement of fact.

The COURT.—The doctor may answer; in so far as not supported by facts is not competent and the Court will not consider it.

Mr. HIGGINS.—Exception.

A. I would say that the expectancy of compensation is an equally strong factor in the litigation cases.

Q. Would you say, Doctor, that tuberculosis coupled with a nervous shock would be an inciting cause to hysteria of this nature?

A. I have never seen any reference to that in the text-books. My own experience I have seen tuberculosis occurring in hysteria cases. I would con-

(Testimony of Dr. George E. Price.)

sider that as a coincidence rather than as a cause of hysteria. Where a combination of nervous shock and tuberculosis exist I would say that the nervous shock was probably the sole cause. It is possible that the tuberculosis would lessen the nerve resistance to a certain extent. As to its probability, I cannot recall, as I stated, any reference to it in the literature, nor can I from my own experience, where that was considered as an exciting cause, although I will admit it is possible. I cannot say that he was totally disabled, totally unfit to follow a gainful occupation at the time I examined plaintiff. I cannot answer such [166] question from my recollection of the case or from my report. I wouldn't know.

TESTIMONY OF DR. WILLIAM S. LITTLE,
FOR DEFENDANT.

Thereupon Dr. WILLIAM S. LITTLE, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. HIGGINS.

My name is William S. Little. I am a physician and surgeon in general practice. I am a graduate of the University of Elizabeth, 1906. Since that time I have been either practicing my profession or been in the army. I practiced in Weeksbury, Kentucky, two years and Kalispell, Montana, since 1910. I know Herbert H. McGovern, the plaintiff in this action and have known him since September

(Testimony of Dr. William S. Little.)

2, 1920. I know his father. I have known him for quite a long time before that. I don't remember definitely when I first met Mr. McGovern. The first meeting that I had with the plaintiff was when he was sent to me for examination by the Veterans' Bureau. At that time he said that he had tuberculosis. He was sent to me under orders; sometimes there is a notation as to what the condition is and sometimes there is not and I don't remember whether it was tuberculosis or not, or whether there was any notation at all on his order for examination. I took the history of his case as given by him, in making my ratings. It is customary to give consideration to the history of the case as given by the patient and in making my conclusion regarding this case I gave consideration to what the plaintiff had told me concerning his condition and the history of his case. I gave him a thorough examination, at that time, as is customary with a general practitioner. It wouldn't be as thorough as a chest expert; I didn't have his lungs X-rayed at that time. From the examination that I made of him, I did not find any indications of tuberculosis. As to the examination of his chest, lungs and sputum, I don't think I had his sputum examined at that time. I examined plaintiff at a later time. He came about November 12th and was dissatisfied evidently from what he had heard from the Veterans' Bureau, and he said he was sure he had tuberculosis, and I suggested [167] to him that he write in to the Veterans' Bureau and have his case reopened and I

(Testimony of Dr. William S. Little.)

would give him a more thorough examination. Rather, I told him I would put him in the hospital for a while and see if he showed any evidence of tuberculosis from his temperature. He was put in a hospital. I forget for what period I observed him in the hospital. He went in the hospital November 12th, and I don't know exactly how long it took me to come to a conclusion on it, probably four or five days to a week. I found no trouble with his lungs. Respecting the plaintiff's habit as to cigarette smoking. Well, he smoked. When I first examined him he had a slight cough, and when I put him in the hospital I requested that he quit smoking cigarettes while he was there, so as not to cause any bronchial irritation, and I was informed that he smoked several packages of cigarettes a day while he was in there. When I came around there was no evidence of cigarettes. Prior to the time plaintiff finally learned what my report was to be, I had a conversation with him. After he was discharged from the hospital he came down to my office and asked me what my findings were and I refused to tell him. I told him he would hear from the Veterans' Bureau, and he told me he was satisfied I had found nothing wrong with him, and that something had to be done; that he had incurred some debts and that they would have to be paid and he had been getting compensation from the Government; he thought he was going to get all of these, and that compensation had been cut down and put him up against it. I was in Kalispell during the

(Testimony of Dr. William S. Little.)

fall of 1922. I saw plaintiff there a number of times during that time.

Q. And with respect to automobiles did you see him, Doctor?

A. Yes, I saw him, with one exception I saw him in an automobile probably four or five times, when I saw him walking one time.

Q. What was he doing when you saw him in the automobile, Doctor?

A. He was driving the car.

Q. Did he complain of any nervous or mental disorder to you at the time of your examinations or observation of him?

A. There was no nervous condition suggested at that time; he gave no history of any, and I had no cause to suspect any nervous condition. [168]

The COURT.—When was this, Doctor?

A. This was in September and November, 1920; he made no claim of any nervous condition. In giving me the history of his case he mentioned no nervous disorder or affliction or mental trouble, it was all his lungs. I recognize Defendant's Exhibit 18, which is a photostatic copy of report that I made.

Q. And the first page of which the date isn't very clear. Looks like it might be September 2, 1920?

A. Yes. That is the report showing the condition of the plaintiff, that I made on that date.

Q. And sent where?

A. I think at that time we were sending them directly to Minneapolis.

(Testimony of Dr. William S. Little.)

Q. And showing you the next sheet of paper, dated November 22, 1920, I will ask you if you recognize that?

A. That is probably the date it is received. The date of that is November 12.

Q. Yes, dated November 12th. You recognize that, Doctor, as a photostat copy of an original made by you of your examination and observation of the plaintiff?

A. I do. I probably sent that to Minneapolis.

Mr. HIGGINS.—We offer that.

Mr. MOLUMBY.—We object to it on the grounds that as far as the copy is concerned it is merely a self-serving declaration, being made by an agent of the Government, and as far as verifying any substantive evidence is concerned they have Dr. Little here himself and he can testify to it.

The COURT.—It may be admitted in evidence. I doubt myself if it has any evidential value, in so far as the Doctor has reported the contents.

Mr. HIGGINS.—Just for one purpose, to complete the record as given to the Bureau in Washington upon which findings were made.

The COURT.—It may be admitted; if it has any value the Court will take it into consideration. The objection will be overruled formally, and exception noted. [169]

DEFENDANT'S EXHIBIT XVIII.

UNITED STATES OF AMERICA.

UNITED STATES VETERANS' BUREAU.

March 20, 1922.

PURSUANT to Section 882 of the Revised Statutes, I hereby certify that the annexed photostatic copies of Medical Report signed William S. Little, dated Sept. 2, 1920; and Medical Report signed W. S. Little, dated Nov. 12, 1920, are true copies of the originals on file in this Bureau.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States Veterans' Bureau to be affixed, on the day and year first above written.

C. R. FORBES,

Director of the United States Veterans' Bureau.

SCHEME OF REPORTS OF PHYSICAL EXAMINATIONS.

Place—Kalispell, Montana,

Date—September 2d, 1920.

1. Claimant's name—Herbert H. McGovern, Jr.
(C193-312)
2. Service organization and rank—M. M. 1st.
cl. U. S. N. R. F.
3. Present address—Marion, Montana.
4. Age—28. Color—White. Previous Occupation—Mining Engineer.
5. Brief military history of claimant's disability:
About the 20th of May, 1918, some salt water leaked through the deck of S. C. No. 42, getting in the batteries, claimant in-

haling the fumes, went on sick report at once, was transferred to the B. H. at New London, Conn. There about thirty days, from there to Hospital Annex, Eastern Point, Conn. From there to Ft. Lyons, Colo. From there to Woodman Sanatorium, Colo. Was discharged from there, discharge coming through Ft. Lyons.

6. Present complaint: Tuberculosis, chronic.
7. Physical examination: Claimant is well nourished, chest is moderately flat, weight 163, height 71½ inches. Pulse before exercise 88, after 130, to normal in 3 minutes. B. P. D90, S-130. The chest expands normally, breath sounds normal. Patient has a slight cough, which might be simulated, if not it is bronchial. No rales or other evidence of condition claimed.
8. Diagnosis is: Tuberculosis, chronic.
9. Prognosis: Good. [170]
10. Is claimant able to resume former occupation?
Yes.
11. Do you advise it? Yes.
12. Is claimant bedridden? No.
13. Is claimant able to travel? Yes.
14. Do you advise hospital care? No.
15. Will claimant accept hospital care? Yes.
16. Is there a reasonable presumption that the applicant has a disability due or traceable to his military service? Yes.
17. What is the degree of his vocational handicap resulting from the disability? Physical

findings show none. Subjective symptoms show practically 100 per cent.

18. Does his physical and mental condition render training feasible? Yes.

Requested August 26th, 1920.

Signature—WILLIAM S. LITTLE,
Grade— _____.

Nov. 22, 1920.

REPORT OF PHYSICAL EXAMINATION.
U. S. PUBLIC HEALTH SERVICE.

FEDERAL BOARD FOR VOCATIONAL EDUCATION.

Bureau of War Risk Insurance.

c No. C-193 312.

D No.

Read Instructions on Back Before Commencing Examination.

Place—Kalispell, Montana.

Date—Nov. 12th, 1920.

1. Claimant's name—McGovern, Herbert Hugh, Jr.
2. Service, rank, and organization—M. M. 1st. cl. U. S. N. R. F.
3. Present address—Marion, Montana.
4. Age—28.
5. Color—White.
6. Principal previous civil occupation—Mining Engineer.
7. Date of induction—June 17th, 1917.
8. Date of discharge—Oct. 17th, 1918.
9. Brief military history of claimant's disability:
About the 20th of May, 1918, some salt

water got through the deck of S. C. No. 42, getting into the batteries, claimant inhaling some of the fumes. Sent to B. H. New London, Conn. to Hosp. Annex Eastern Point, Conn., to Ft. Lyons, Colo., to Woodman Sanatorium, Colo., for discharge.

10. Present complaint (see par. 10 on reverse):
General weakness.
11. Physical examination (claimant must be stripped): B. P. 140/90, rate 88, after exercise, 128, in two minutes to 100. There are no rales, breathing is apparently normal in all parts of the lungs. Heart action is good. This claimant was so persistent that he was tubercular that I put him in the hospital for three days. During that time his temperature was not above normal, and his pulse rate not above eighty. He is well nourished and developed, and there are no indications whatever of tuberculosis. I have inquired as to his actions at his home, where he tells me that he has to spend most of his time in bed and am told that he is very active and outdoors all the time indulging in strenuous exercise. It is my opinion that if this man ever did have anything wrong with him the condition is relieved now. He says that he is too weak to work and owes a lot of money, and has to have his compensation raised to pay his debts. I can see no reason for this man getting any compensation whatever.

Vision (Snellen chart) (Uncorrected 20-20 R. 20/20, L, 20/20), (Corrected by claimant's glasses R./20, L./20) [171]

Hearing (spoken voice) (R. 20/20), (L. 20/20.)

- 12. Diagnosis: No pathology.
- 13. Prognosis:
- 14. Is claimant able to resume his former occupation? Yes. Any occupation —.
- 15. Is claimant bedridden? No.
- 16. Is claimant able to travel? Yes.
- 17. Do you advise hospital care? No.
- 18. Will claimant accept hospital care?
- 19. Has claimant a vocational handicap? (See par. 19 on reverse.) No.
- 20. Is his physical and mental condition such that vocational training is feasible? Yes.
- 21. Did you examine the man yourself on this date? Yes.
- 22. Any other remarks:

Name—W. S. LITTLE, M. D.

Title—Designated Examiner.

Address—Kalispell, Montana.

TO BE FILLED OUT IN DISTRICT OFFICE.

B. W. R. I.

F. B. V. E.

This report is in response to B. W. R. I. request of —, 192

In my opinion the disability is — due to service

Training is — feasible.

The applicant has — a vocational handicap.

Follow-up report is — necessary every —days.

_____,
District Supervisor,
District No. —.

_____, 192.

District Medical Officer
District No. —

INSTRUCTIONS FOR FILLING OUT THIS REPORT.

(Number of paragraphs correspond to questions on other side.)

9. Give a brief military history as stated by the claimant, showing the connection between his disability and his military service. Give nature of injury or illness, when and where incurred and treated, and whether discharged on that account.
10. In recording the man's complaint, give **SYMPTOMS** as stated by him; do **NOT** give a diagnosis.
11. (a) In recording the results of a physical examination, do **NOT** give a diagnosis; give the **PHYSICAL SIGNS** as you find them.
(b) In cases of **WOUNDS**, give location and size of scars and whether or not they are adherent and tender. **ALSO**, a description of the injury to the underlying structures, with the resulting deformity, disturbed function, and limitation of motion expressed in degrees. Similar notation must be made in case of arthritis.
(c) When the applicant complains of dyspnea on exertion as a sequela of **GASSING**, **HEART DISEASE**, or bronchial **ASTHMA**, note his pulse and respiration before, just after, and 2 minutes after

exercise, which should consist of hopping 25 times on each foot.

- (d) In cases of HEART DISEASE, given general appearance, location of apex bent, and time of occurrence, location, and direction of transmission of murmurs, and rate and rhythm of pulse.
 - (e) If the claimant is wearing glasses, record the vision as corrected thereby. It is not expected that the general examiner will attempt to fit proper lenses. If impairment of vision or hearing is found, the case should be referred according to the District Supervisor's instructions.
 - (f) In cases of neuro-psychoses, an additional special report must be rendered by a competent neuro-psychiatrist. Refer these cases according to the District Supervisor's instructions. [172]
 - (g) If, in addition to the disability due to service, the man has any other impairment, describe it fully.
12. Use the nomenclature of the United States Public Health Service.
 18. Training is feasible when the mental and physical conditions permit AND when the suggested occupation is not incompatible with his disability.
 19. A claimant is considered to have a vocational HANDICAP when his disability would constitute a handicap in his former occupation, such as to affect employability or earning power.

Men without a vocation, i. e., students, and those who have not worked at one occupation more than one year and are under 21 years of age, should have their handicaps considered in light of general labor market.

SPECIAL TUBERCULOSIS REPORT.

(In cases of suspected pulmonary tuberculosis, the following information must be furnished in addition to the report on the other side of this sheet.)

If the man has been treated since discharge, obtain, if possible, a statement from the physician showing the disability for which the man was treated and the date on which treatment began. In recording the results of the physical examination (question 11 on obverse side), give all the physical signs found on inspection, percussion and auscultation, so that it may be clear that there are reasonable grounds for making a diagnosis of pulmonary tuberculosis.

Height, with shoes — inches. Temperature, — F. Time of day —M. Pulse ——. Weight (without coat) present ——. Did you weigh the man yourself? ——. Normal ————— —.

(Man's statement)

Highest (Lbs. —————) Lowest (Lbs. —————)
(Date —————) (Date —————)

Sputum: Positive or negative ——. If negative, for how long? —.

By whom was the sputum examined?

————— (Do not defer rendering this report if sputum examination is not feasible. Obtain from the man the address of the last person or

(Testimony of Dr. William S. Little.)

institution by whom a sputum examination was made.)

Diagnosis _____

(Specify the extent and location of the lesion.)

Classification—National Tuberculosis Association Standards.

Condition—Active, quiescent, apparently arrested, or arrested. (Underscore the condition found.)

Stage—Incipient, moderately advanced, or advanced. (Underscore the stage found.)

Name of examiner _____ M. D.

Date _____, 192 Address _____.

Cross-examination by Mr. MOLUMBY.

My first examination was on September 2d. I didn't know about plaintiff being examined in Spokane by Dr. Price until after the second examination, and then plaintiff told me about it. I think Dr. Price said he examined him in May. [173]

Q. You heard Dr. Price's testimony a few moments ago; it must have been a week or two afterwards.

A. I think Dr. Price said he examined him in May, didn't he? It was several months after that. My second examination was in November, 1920. I don't know where plaintiff went after that. He disappeared for some time; at least, his father didn't know where he was and his father tried to

(Testimony of Dr. William S. Little.)

get me to find out where he was; and the next thing we heard about him, he was in Great Falls. His father and I are good friends. I mean "for some time," a couple of months, along about that time and Christmas. I didn't know that he was in the St. Barnabas Hospital in Minneapolis in November, the same month I examined him. I did not make an X-ray examination of his lungs the second time I examined him.

Q. Just what examination did you give him the second time that you didn't give him the first time?

A. I just had him in the hospital and had them take his temperature about half a dozen times a day; active tuberculosis will almost always show temperature. It is not possible that he had an arrested case of tuberculosis at that time. I found no evidence of an arrested case of tuberculosis.

Q. You couldn't state as to whether he ever had any tuberculosis or not from the examination you made?

A. No, he had an X-ray picture taken at Fort Lyons and he had this picture with him, which he showed to me, and it showed some enlargement of the bronchial glands.

Q. You observed nothing at all concerning his nervous condition at that time, Doctor?

A. Only after my second examination, he came to my office and he got very much excited about the examination; he said he was going to have his compensation raised regardless of where he had

(Testimony of Dr. William S. Little.)

to take the case, and he was going to take it right up to Washington to get it squared up, get it straightened out. From my observation of plaintiff, there was no disability that I could detect. I completed the examination probably about the 16th or 20th of November, 1920.

Q. I will ask you if, under date of January 4, 1922, Doctor, you did not write [174] to the United States Veterans' Bureau, Chief Placer Building, Minneapolis, and state that this man has been drawing total compensation from tuberculosis; that there was no indication whatsoever of any nervous disability; that if he were to get any compensation at all he was entitled to either total or none at all?

Mr. HIGGINS.—We object as being improper cross-examination and occurring at a date subsequent to the 31st day of August, 1919.

The COURT.—He may answer. This is an appeal to your recollection. If you cannot recollect you have a right to see the document.

A. What was that question. If I could see the document.

Q. I will ask you if you did not write a letter of that kind. It is nailed together here?

A. I can explain that letter if you want me to. I wrote that letter but I could explain why I wrote it. He came back; I didn't know he was back in Kalispell at that time until the Red Cross nurse came to me and also the Legion Commander and the Secretary of the Chamber of Commerce;

(Testimony of Dr. William S. Little.)

all three of them spoke to me about a man who wasn't getting properly treated by the Veterans' Bureau and I am the only one over there connected with the Veterans' Bureau, and of course it was up to me to explain the situation, and I wrote back to get the history of his case, to find out whether he really had a neurosis or had a disability, and I wanted the Veterans' Bureau to get the matter straightened up, because I have never had any trouble with these ex-service men over there, with the exception of this case, and I didn't want the impression to get out in the community that the Veterans' Bureau was not properly taking care of these men, and that is why I wrote the letter.

Mr. MOLUMBY.—We would like to offer this letter.

Mr. HIGGINS.—We object, if the Court please, on the ground that this letter is not the basis of disagreement between plaintiff and defendant. For the further reason that it was written subsequent to the 31st day of August, 1919, and for the further reason it was written after the institution of this suit. [175]

Mr. MOLUMBY.—No, it was written January 24, 1922.

The COURT.—Well, I assume, of course, it is only offered because you assume it contradicts the doctor's statement somewhat.

Mr. MOLUMBY.—And it also goes to show the mental attitude of this witness.

The COURT.—It may be introduced for that

purpose. The objection will be overruled and exception noted.

PLAINTIFF'S EXHIBIT XIX.

TREASURY DEPARTMENT.

UNITED STATES PUBLIC HEALTH SERVICE.

January 4, 1922.

From: Dr. W. S. Little,
Designated Examiner,
Kalispell, Montana.

To: District Manager, District No. 10,
U. S. Veterans' Bureau,
Keith-Plaza Building,
Minneapolis, Minnesota.

Subject: Herbert Hugh McGovern, C-193312.

This man a few months ago returned from Asbury Hospital, Minneapolis, presumably receiving \$80.00 a month compensation for total disability. He was examined by a Clean-up Squad and has since had his compensation cut to \$8.00 a month, I understand.

He has retired to his bed threatening to commit suicide and has enlisted the aid of the American Legion, Red Cross, and what other organizations he can get to give ear to his trouble. Of course, he is representing that he is a worthy case.

I have examined this man two times, once on September 2, 1920, and again on November 12, 1920. At this time there was no indication whatever of any nervous disability. He had been drawing total compensation for tuberculosis, as your

(Testimony of Dr. William S. Little.)

files will show you. This compensation had been cut and he informed me that he had to have this money to pay his debts that he had incurred under the supposition that he was always going to receive compensation for total disability. It was a short time after that, I understand, that he developed this nervous condition for which he was hospitalized. [176]

While I have had no opportunity to examine this man since my last report on November 12, 1920, his actions at that time and his subsequent development lead me to believe that if there is a neuroses it is self inflicted. I do not know what report was made on him at the Asbury Hospital, but taking this case as I see it I do not believe that this man has a disability of any kind. I understand he is getting \$8.00 a month compensation now. If he has a disability at all he should be getting a compensation for total disability, otherwise he should not receive any.

I would request that the Director take up this case in some way so as to have it definitely settled. This has been the only case in my territory here where there has been any criticism as to the actions of the Bureau and I would like some action taken to shut this man up.

W. S. LITTLE, M. D.,
Designated Examiner.

Redirect Examination by Mr. HIGGINS.

This is the only case about which I have had any trouble, of those I have examined. The father of

(Testimony of Dr. William S. Little.)

this boy and I are good friends and have been for a long time; more so since the boy's case has come up before the Veterans' Bureau; before that I had only a speaking acquaintance with him.

Q. Is your disposition generous or otherwise in giving veterans war ratings?

A. I always try to give them the benefit of any possible doubt. I was actuated by the same character of judgment in this case as in other cases.

TESTIMONY OF DR. ALEXANDER JOSEWICH, FOR DEFENDANT.

Thereupon Dr. ALEXANDER JOSEWICH, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. HIGGINS.

My name is Dr. Alexander Josewich. My profession is physician. I have been practicing such over ten years. I have specialized in internal medicine, particularly tuberculosis. I have had over ten years' experience in that work. I am acquainted with the plaintiff. I first met him December 6, 1920. He was a patient in St. Barnabas Hospital, Minneapolis, then a contract hospital for the Public Health Service and he came under my care as I was the attending specialist in tuberculosis at that time. I gave the plaintiff, at that time, [177] what I would consider a very thorough examination. I gave an X-ray examination and a physical and laboratory examination. I was looking par-

(Testimony of Dr. Alexander Josewich.)

ticularly for evidence of tuberculosis. The plaintiff remained there three days. From my examination, made at that time, I found no evidence of clinical tuberculosis. I examined his sputum and gave him all of the tests that medical science ordinarily gives to determine whether or not a patient is suffering from tuberculosis. From that examination I did not find the plaintiff suffering from tuberculosis.

Q. Now why didn't the plaintiff stay longer with you?

A. He developed an emotional disturbance on the 9th of December, necessitating his removal to another institution. Prior to that time I think I informed plaintiff of my findings with reference to his case as to tuberculosis. I am not sure. It is my practice in all cases to inform the patient of my findings. It would be very likely that I informed him in this instance when the man was sent back there for that ailment and I discovered he didn't have it. I saw him when he was in Asbury Hospital but not in the sanitarium. I made another examination of plaintiff, I believe it was on March 24, 1921, at Asbury Hospital in Minneapolis. This examination was made for the purpose of determining whether the patient had any evidence of tuberculosis. From this examination I found no tuberculosis. The next time I saw plaintiff it was some time in May. As to his condition at that time, I didn't examine him; he seemed to be fairly well though. He had a good color, good

(Testimony of Dr. Alexander Josewich.)

weight, apparently, and looked well nourished. As to his mental condition, as I observed it, he was rational and seemed to be very alert.

Q. And discussing what subjects with him?

A. Oh, the ordinary subjects as to future care, his plans.

Q. And did he ask you for a prescription at that time? A. Yes, he did.

Q. And what kind of a prescription did he ask for?

A. He said that he thought a liquor prescription would help him very materially, inasmuch as he had been used to having some whiskey in his cabin, that he used very little of it. I gave him a prescription for whiskey. When he came to me for [178] examination and before I examined him I got his history; that history consisted of where he had been at other hospitals and what he told me concerning his own case.

Q. And any rating that you would give him would be based upon the history of the case, as well as what you actually found yourself?

A. I didn't give any rating; we don't give ratings. Express opinions.

Q. That is, you made a diagnosis?

A. I made a diagnosis, yes. That is what I mean by "opinion," and in making those diagnoses and in giving opinions, I was influenced by the history of the man's case as given by himself, as well as what I could find myself as to his condition.

(Testimony of Dr. Alexander Josewich.)

Cross-examination by Mr. MOLUMBY.

I examined plaintiff first December 6, 1920. I don't know when Dr. Little examined him. Explaining the meaning of the word "clinical," we divide tuberculosis into infection and disease. We may have infection and not disease. Practically ninety per cent have an infection before we are fourteen years of age and yet comparatively few of us develop the disease. We try to be practical about our classification, and if we have no evidence of clinical tuberculosis we feel reasonably sure that the disease does not exist, although the person may have an infection. I could not say from my examination that it was impossible for him to have had tuberculosis prior to the date I examined him. It was very possible that he did have tuberculosis prior to that. As to whether there was anything in my examination which would indicate one way or the other whether he did have tuberculosis prior to that, I had no evidence of tuberculosis at that time. Yes, it was three days after my examination of him that he showed this sudden nervous condition. It was on December 9th. He was transferred from St. Barnabas Hospital in Minneapolis to the Minneapolis Sanitarium by the District Manager, not upon my recommendation but at the recommendation of Dr. Michael, I believe, who had examined him prior to the time he was transferred. After I told him that I could find no tuberculosis, he showed no personal animosity toward me. On the

(Testimony of Dr. Alexander Josewich.)

other hand, I think I was one of McGovern's best friends. [179]

Q. And if he were faking and attempting to get compensation from the Government under a false claim of tuberculosis and you balked at that thing, he would naturally show animosity toward you, wouldn't he? A. Yes.

Q. Always been friendly to you? A. Yes.

Q. Few doctors that he has been friends to?

A. Yes. I am not familiar enough to state whether that is a characteristic of hysteria. As to my familiarity of the characteristics of hysteria, I have seen some cases. I should think it possible that one who had hysteria disorders, such as have been described here, would appear on occasion alert and clear minded.

Q. That in no way indicates he did not have nervous hysteria or disorder?

A. I should say not.

Q. As a matter of fact, those who do suffer from such disability are generally alert and clear, are they not?

A. That is variable. It is not necessary to find germs from sputum to determine whether there is tuberculosis. We frequently diagnose tuberculosis where there is absolutely no sputum.

Q. Then, Doctor, in these examinations which preceded yours, where they found tuberculosis probably a year or so prior to that although they found no indications in the sputum of tuberculosis, he might nevertheless have had tuberculosis?

(Testimony of Dr. Alexander Josewich.)

A. Yes, indeed.

Q. And their finding that tuberculosis existed might be correct? A. Surely.

Q. Doctor, in your experience as tubercular specialist have you ever found that hysteria resulted from tuberculosis or a companion with it?

A. I have never seen it. It is a thing that is not likely to happen, but I should think it would be possible. At times, tuberculosis affects the nerves, but very rarely.

Q. When it is affected to such an extent that one who had a nervous shock might [180] get hysteria as a result, from a combination of the two?

A. That would depend largely upon the stage of the disease and the toxin resulting from that disease.

Q. will ask you, Doctor, if at the time you examined McGovern, or the several times you examined McGovern in Minneapolis there, if in your opinion he was permanently disabled, totally disabled?

A. I can answer that—I will have to answer that question in two answers. You are asking a double question. He was totally disabled at that time, and he might have a permanent disability.

Q. In your opinion it was reasonable to suppose that total disability might continue during his lifetime? A. I should say, very likely not.

Q. There is a possibility, is there, Doctor, that it would continue?

A. There is always that possibility.

(Testimony of Dr. Alexander Josewich.)

Q. It is not an improbability is it, Doctor?

A. No, not with any of us.

Redirect Examination by Mr. HIGGINS.

Plaintiff had no tuberculosis when I examined him. There would be no reason that I can see for tuberculosis, as a contributing cause, to bring about this hysterical condition at that time. From my examination at that time, I would not rate his as "permanent and total." The reasonable supposition would be that he would improve. The rating that I would give him would be from the mental disturbance he exhibited after I examined him for tuberculosis.

TESTIMONY OF M. L. STIFFLER, FOR DEFENDANT.

Thereupon M. L. STIFFLER, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. HIGGINS.

My name is M. L. Stiffler. I am a physician and graduate of the University of Colorado, 1913, and have been practicing my profession continuously [181] since that date, at Denver, in South Dakota and in Minneapolis. I have confined my work entirely to mental and nervous diseases. I heard the testimony of Dr. Price. I heard the testimony of the witnesses on behalf of the plaintiff in the persons of F. L. Carey, Father William R. Callahan, Loy Molumby, Herbert H. McGovern, Sr., Lola

(Testimony of M. L. Stiffler.)

Beller, Dr. Dora Walker and Dr. Thomas Walker. There is such a thing as "pension" or "compensation" neurosis. It is a recognized condition in the medical profession and may be commonly likened to "railroad spine," perhaps, as it is frequently spoken of; it is a common term.

Q. Now, after hearing all of the testimony in this case so far, both on behalf of the plaintiff and on behalf of the defendant, what would be your expert opinion as to the cause or condition of the plaintiff in this case, assuming him to be suffering as recited by the witnesses for the plaintiff?

A. If I am entitled to an expert opinion on that, I would say that he is suffering from hysteria; and you ask me the cause of that?

Q. Yes, sir.

A. The cause of that in all probability was his anxiety regarding his receiving compensation from the Government.

Q: Did the symptoms, as shown by the testimony of these various witnesses, indicate epilepsy or psychosis?

A. It is a difficult question to answer by yes or no, because there are many symptoms that are common to epilepsy, psychosis and hysteria. Taking all the symptoms into consideration, however, I would say no.

Mr. MOLUMBY.—I don't think that answer is responsive to the question, because I don't think the Doctor heard the question.

The COURT.—I think he did. I think it is a

(Testimony of M. L. Stiffler.)

fairly cautious answer of a conscientious expert, fairly responsive from the stand. Motion denied.

Q. Doctor, you heard some testimony to the effect that a hysterical condition would be produced by tubercular condition on the part of the patient. Have you ever had any experience along that line in the practice of your profession?

A. I have never seen a case where tuberculosis could be called the sole cause. [182] If tuberculosis were any cause it would be a remote one.

Q. Now, if the plaintiff in this case is suffering from hysteria by virtue of his unsatisfied desire for compensation or insurance, what would you say would be the effect upon the plaintiff if it were definitely decided that he was to be denied insurance?

A. The immediate effect would only have to be guessed at, and might be either good or bad. Eventually, however, the effect would be good. The cause, in other words, of his condition would be removed.

Q. Would you say, Doctor, that under medical ratings of the United States Veteran's Bureau, under the rating as provided by the United States Veterans' Bureau, medical ratings, that the plaintiff in this case is permanently and totally disabled? A. I don't think so.

Cross-examination by Mr. MOLUMBY.

As to the basis of my statement that the cause of this man's condition was want of compensation, I necessarily have to base my opinion on the state-

(Testimony of M. L. Stiffler.)

ments that have been made by other witnesses. I have never examined this man; particularly the statements of the witnesses Dr. Price and Dr. Little, as indicated in their testimony that he stated he was desirous of compensation.

Q. Doesn't every man who makes application for compensation desire compensation? A. Yes.

Q. Isn't it just as reasonable to suppose, Doctor, that one might now suffer from hysteria who has since his discharge from the navy suffered from tuberculosis and who also received a nervous shock while he was in the service?

A. No, I don't think so.

Q. You don't think a man could suffer from hysteria under those circumstances?

A. He could. I thought you said "just as likely."

Q. Don't you think the compensation is more likely of it?

A. Of this particular form of trouble, yes. Those who have pensionitis, railroad spine and compensationitis, very frequently have fits of this kind [183] which last anywhere from two minutes to half an hour or an hour.

Q. Then such a disability in itself is such a disease or disability, is it not? A. Yes, sir.

Q. Which is just as serious and disables him just as much as any other sort of disability, doesn't it, Doctor? A. Temporarily.

Q. And if allowed to extend over a period of

(Testimony of M. L. Stiffler.)

four or five years are not the chances of recovery lessened a great deal, Doctor?

A. The chances of recovery are lessened some, not necessarily a great deal.

Q. Your statement a few minutes ago, Doctor, that if he were denied this compensation, denied this insurance, he would likely recover; in what length of time would he likely recover?

A. Understand that is an assumption. I cannot say that for certain.

Q. In this case, the evidence shows he has been trying to get this and been denied for five years; then why hasn't he recovered after being denied so long?

A. Because always the hope held out he is still going to get it. That hope is not always held out to him. There will be an end to it some time.

Q. He would die, that would be the only thing that would make him totally and permanently disabled under that assumption, is it not, Doctor?

A. No, sir.

Q. What would happen?

A. The activities of the Bureau will change within a few years, and that will be handled entirely differently. That is not what I figure will ultimately cure him of his disability, no sir, it is just a guess that he might recover from this disease. It is a reasonable certainty that he will recover. There is a slight possibility that he will completely recover. I think it is reasonable to suppose that he will recover from it. It is unreasonable to suppose that he

(Testimony of M. L. Stiffler.)

will not recover from it. It is unreasonable to figure that he will not recover.

Redirect Examination by Mr. HIGGINS.

The testimony of Dr. Josewich would also aid me in arriving at my [184] diagnosis of this case, when he testified that the defendant had no tuberculosis and exhibited no neurosis, and three days later became neurotic when he learned he was not to get a rating as a tubercular patient. Frequently much hospitalization causes that state of mind, also the solicitude of friends, as described by Dr. Little in his testimony. That is, those people in Kalispell, who were striving to get compensation and insurance for this plaintiff, also the solicitude of friends in Great Falls; the solicitude as shown by the testimony of Mr. Carey that he undoubtedly felt for the plaintiff.

TESTIMONY OF L. A. LAWLER, FOR DEFENDANT.

Thereupon L. A. LAWLER, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. HIGGINS.

I am the same Mr. Lawler who has previously testified in this action. I have examined the files and records in the office of the United States Veterans' Bureau in the case of Herbert McGovern vs. United States of America. I am familiar with the condition of the War Risk Insurance of Mr.

(Testimony of L. A. Lawler.)

McGovern. I know that it has been and still is in a state of lapse.

Q. You know, do you, from your inspection of those records, when payment of premiums last ceased and when the insurance is asserted to have lapsed by virtue of nonpayment of premiums?

Mr. MOLUMBY.—I think it is all admitted in the pleadings.

A. In December, 1918; thereafter McGovern again reinstated his insurance, effective as of March 1, 1919, and paid premiums to include July, 1919; thereafter, McGovern or no other person in his behalf made further payment of premiums and his insurance lapsed at midnight, August 31, 1919. [185]

Mr. HIGGINS.—I would like to have the case reopened on the part of the defense for the introduction of a certified copy of Bureau of War Risk Insurance Bulletin No. 1, marked Exhibit 20 for defendant.

The COURT.—It may be filed.

Note: This bulletin is designated "Bulletin No. 1," issued by William C. De Lanoy, Director of the Bureau of War Risk Insurance in the Treasury Department, under date of October 15, 1917, entitled, "Terms and Conditions of Soldiers' and Sailors' Insurance," pursuant to the provisions of Section 402 of an act "To amend 'an act to authorize the establishment of a Bureau of War-Risk Insurance in the Treasury Department,' approved September 2, 1914, and for other purposes," approved October 6, 1917.

Mr. HIGGINS.—Also a certified copy of Treasury Decision 20, a regulation, marked Exhibit No. 21 for defendant.

The COURT.—They may be filed. They are not evidence; they may be brought to the Court's notice.

DEFENDANT'S EXHIBIT XXI.

UNITED STATES OF AMERICA.

UNITED STATES VETERANS' BUREAU.

October 4, 1922.

PURSUANT to Section 882 of the Revised Statutes I hereby certify that the annexed photostatic copy of T. D. 20 W. R. dated March 9, 1918, signed William C. DeLanoy, Director, Bureau of War Risk Insurance, is a true copy of the original on file in this Bureau.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States Veterans' Bureau to be affixed, on the day and year first above written.

[Seal] C. R. FORBES,
Director of the United States Veterans' Bureau.

[186]

(T. D. 20 W. R.)

Total Disability.

Regulation No. 11 relative to the definition of the term "total disability" and the determination as to when total disability shall be deemed permanent.

TREASURY DEPARTMENT.

BUREAU OF WAR RISK INSURANCE.

Washington, D. C., March 9, 1918.

By virtue of the authority conferred in Section 13 of the War Risk Insurance Act the following regulation is issued relative to the definition of the term "total disability" and the determination as to when total disability shall be deemed permanent:

Any impairment of mind or body which renders it impossible for the disabled person to follow continuously any substantially gainful occupation shall be deemed, in Articles III and IV, to be total disability.

"Total disability" shall be deemed to be "permanent" whenever it is founded upon conditions which render it reasonably certain that it will continue throughout the life of the person suffering from it. Whenever it shall be established that any person to whom any installment of insurance has been paid as provided in Article IV on the ground that the insured has become totally and permanently disabled, has recovered the ability to continuously follow any substantially gainful occupation the payment of installments of insurance shall be discontinued forthwith and no further installments thereof shall be paid so long as such recovered ability shall continue.

WILLIAM C. De LANOY,
Director.

Approved:

W. G. McADOO,
Secretary of the Treasury. [187]

Thereafter, on July 9, 1923, defendant submitted and filed its motion for specific findings of fact, separately stated, in words and figures following, to wit:

In the District Court of the United States, District
of Montana, Great Falls Division.

HERBERT McGOVERN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

MOTION ON BEHALF OF DEFENDANT FOR
SPECIFIC FINDINGS OF FACT SEPA-
RATELY STATED.

Comes now the defendant, United States of America, and, deeming the following facts established by the evidence in this case, moves the Court to find said facts, and separately and specifically as hereinafter set forth:

I.

That Herbert McGovern, the plaintiff herein, entered the Naval Forces of the United States September 5, 1917, and on March 5, 1918, made application for and was granted Ten Thousand Dollars (\$10,000.00) term insurance, payable as provided in the Act of Congress approved October 6, 1917, to the insured during permanent total disability, and from and after his death to his designated beneficiary. The provisions of the War Risk Insurance

Act, together with all subsequent amendments thereto, Bulletin Number 1, issued October 15, 1917, Treasury Decision Number 20, issued March 8, 1918, and all other rules and regulations promulgated pursuant to the authority conferred upon the Director of the Bureau of War Risk Insurance, constituted the terms of the plaintiff's contract of insurance with the United States of America. [188]

II.

That the premium due upon the plaintiff's Ten Thousand Dollar (\$10,000.00) term insurance was Six and 60/100 Dollars (\$6.60) per month, and it was expressly provided in Bulletin Number 1 that insurance would lapse for nonpayment of premium thirty-one days after an unpaid premium became due .

III.

That the monthly premiums due upon the plaintiff's insurance from March 5, 1918, to include October, 1918, were deducted from his active service pay under an authorization contained in his application for insurance. This authorization for deduction of monthly premiums expired upon the plaintiff's discharge from the Naval Forces of the United States, on October 27, 1918, and thereafter no further deductions of premiums were made under such authorization. The plaintiff did not pay, or cause to be paid, nor was there paid by the plaintiff or any person in his behalf, the premium due for the month of November, and by reason of such failure to pay premiums the plaintiff's insurance lapsed at

the expiration of the thirty-one day grace period, on December 31, 1918.

IV.

That on March 22, 1919, the plaintiff addressed a communication to the bureau, stating that he was then in as good health as he was at the time of his discharge, on October 17, 1918, and enclosed a money order in the sum of Thirty-nine and 60/100 Dollars (\$39.60) for the purpose of reinstating his insurance. The plaintiff's application for reinstatement was granted, and the Thirty-nine and 60/100 (\$39.60) Dollars was applied in payment of premiums to include July, 1919. The plaintiff did not pay, or cause to be paid, any premiums due upon his insurance for months subsequent to July, 1919, nor were there paid any premiums due upon his insurance for months subsequent to July, 1919, and by reason of such failure to continue to pay premiums, his insurance again lapsed for nonpayment of premiums, at the expiration of the thirty-one day grace period, on August 31, 1919, and became null and void after that date. [189]

V.

That the records of the Bureau of Medicine and Surgery of the Navy Department show that the plaintiff was admitted to the Naval Hospital, New London, Conn., June 26, 1918, and was found to be suffering with tuberculosis. He was later transferred to Fort Lyons, Colorado, and from there to the Modern Woodmen's Sanatorium, Colorado Springs, Colorado, where he was discharged from the Naval Service of the United States.

VI.

That on April 26, 1919, the plaintiff filed claim with the Bureau of War Risk Insurance for compensation (not insurance) because of physical disability which he alleged resulted from salt water getting in the storage batteries and engine-room gas. Reports of physical examinations made by physicians designated by the Bureau of War Risk Insurance, now known as the United States Veterans' Bureau, on September 1, 1919, January 1, 1920, February 25, 1920, May 3, 1920, December 9, 1920, December 17, 1920, February 7, 1921, May 19, 1921, September 20, 1921, and December 19, 1922, showed that the plaintiff's sputum was negative for tubercle bacilli, and that his tubercular process had been arrested or quiescent since his release from Naval Service.

VII.

That the plaintiff did not allege that he was suffering with any nervous or mental disease or disorder at the time of his discharge from the Naval Forces of the United States, nor was any evidence of any nervous or mental disease or disorder discovered in the course of his physical examinations prior to May 3, 1920. The report of physical examination dated May 3, 1920, signed by F. B. Nather, Surgeon, Spokane, Washington, states that plaintiff complained that his nerves were all shot to pieces, that he was weak and could hardly walk. His physical examination at that time showed that his head, neck and abdomen were in normal condition. Attached to F. B. [190] Nather's report of examination dated May 3, 1920, there was a report

of neuro-psychiatric examination made by George E. Price, M. D., a neuro-psychiatrist of Spokane, Washington, which stated that the plaintiff was suffering with hysteria. Dr. Price recommended that work would be the best form of treatment for this particular case, but as this would undoubtedly meet with strenuous opposition, he suggested that plaintiff be sent to a neurological center for treatment.

VIII.

That after examination of the plaintiff on November 12, 1920, Dr. W. S. Little of Kalispell, Montana, reported that he could find no evidence of physical or mental disorder, that the plaintiff was able to resume his former occupation, and that he could see no reason for plaintiff getting any compensation whatever.

IX.

That on March 12, 1921, Loy J. Molumby, Great Falls, Montana, was appointed as guardian of plaintiff, as an incompetent person, by the Court of the Eighth Judicial District of the State of Montana, in and for the County of Cascade, but the said Loy J. Molumby was discharged as such guardian on August 11, 1921, upon the advice of Dr. Michaels, a neuro-psychiatrist of the United States Veterans' Hospital, No. 68, Minneapolis, Minnesota, who reported that the plaintiff was not incompetent.

While there is some evidence which indicates that the plaintiff has no real mental or nervous trouble and that he is merely pretending to have such disability, for the purpose of securing compensation and

insurance from the United States Veterans' Bureau, the plaintiff has been given the benefit of the doubt by the bureau, and his malady diagnosed variously as constitutional psychopathic inferiority, without psychosis, but with emotional instability, psychoneurosis, pensionitis, and compensation hysteria. [191]

X.

That the experts called by the defendant to testify in this case stated that in their opinion the plaintiff was probably suffering with hysteria superinduced by anxiety to obtain compensation and insurance, and that this malady was not of a permanent nature, such as would warrant a reasonable expectation that it would totally disable the plaintiff during the remainder of his life.

XI.

That under the Medical Rating Schedule approved by the Director of the United States Veterans' Bureau, July 15, 1921, hysteria and kindred nervous diseases are classified as temporary disabilities, and as not warranting a finding of permanent total disability for the purpose of paying insurance benefits.

XII.

That upon the evidence secured by physical examination and other evidence presented by or in behalf of the plaintiff, the director of the Veterans' Bureau found that the plaintiff was not shown to be permanently and totally disabled on or before August 31, 1919, the date upon which his insurance lapsed for nonpayment of premiums.

XIII.

That there is evidence in the plaintiff's compensation and insurance file in the United States Veterans' Bureau, upon which the director of the said bureau could reasonably find that the plaintiff was not permanently or totally disabled on or before August 31, 1919.

XIV.

That at the trial of this action, the plaintiff did not attempt to offer any evidence that the finding of the director of the United States Veterans' Bureau was unreasonable and not founded on sufficient facts to reasonably warrant such a finding. [192]

XV.

That the plaintiff did, however, offer evidence of his physical condition which was not shown to have been previously submitted to the United States Veterans' Bureau, including the testimony of himself, taken by deposition, of Loy J. Molumby, F. L. Carey of Great Falls, Montana, Rev. William P. Callaghan, Herbert H. McGovern, Sr., Lola Veller, Dr. Dora Walker, W. S. Bentley, Dr. Thomas Walker and Dr. Vidal, all of which was allowed to be introduced in evidence over the objection of the defendant for the reason that such evidence had not previously been submitted to the United States Veterans' Bureau, and, as it had never been acted on by the director of the said Bureau, could not constitute the basis of a disagreement whereon suit might be brought under the provisions of Section 13 of the War Risk Insurance Act (40 Stat. 555),

and for the further reason that all of such evidence concerned the plaintiff's physical condition subsequent to August 31, 1919, the date upon which his insurance lapsed.

XVI.

Neither from the evidence submitted to the Bureau or from any testimony submitted at the trial of this case has it been shown that the plaintiff, on or before the 31st day of August, 1919, or at any time, or at all, was suffering from tuberculosis or nervous or mental disorder, or any disease whatsoever, so as to disable plaintiff permanently and totally from continuously carrying on any gainful occupation, but that the testimony does show, that if plaintiff ever suffered from tuberculosis, the same was at all times above mentioned arrested, and in a quiescent and not an active state, and any disorder that plaintiff may be suffering with at present has been diagnosed by all the doctors testifying in this case, as hysteria, which is curable, and which condition is not shown to have developed to a total degree of disability until long after the 31st day of August, 1919.

L. A. LAWLER,

Attorney, United States Veterans' Bureau.

RONALD HIGGINS,

Assistant United States Attorney, District of Montana. [193]

Thereafter, and on July 18, 1923, plaintiff submitted and filed his findings of fact and conclusions of law, in the words and figures following, to wit:

In the District Court of the State of Montana, in
and for the District of Montana.

HERBERT H. McGOVERN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF
LAW.

Comes now the plaintiff in the above-entitled action and respectfully requests the Court to make the following findings of fact and conclusions of law in this action:

1.

That the plaintiff is now and has been for a period of more than five years prior to the institution of the action, a resident of the State of Montana, in the District of Montana.

2.

That on or about the 19th day of June, 1917, the plaintiff enlisted in the Naval Forces of the United States of America and that down to and including the 17th day of October, 1918, he served the Government of the United States of America as a first class machinist in its navy and was, during all of said time employed in active service during the war with Germany and its allies.

3.

That on or about the 5th day of March, 1918, the plaintiff made application for insurance under the

provisions of Article Four of the War Risk Insurance Act of Congress, in the sum of Ten Thousand Dollars; that he was [194] duly issued a certificate of his compliance with said War Risk Insurance Act and that thereafter, during the term of his service in the United States Navy there was deducted from his pay, for said services by the United States Government, monthly premiums upon said insurance and that said insurance was in force and effect down to and including the 31st day of October, 1918.

4.

That during plaintiff's period of service with the defendant during the war with Germany and its allies, and while acting in line of duty of such service, the plaintiff contracted a disability and suffered an injury which have ever since the 17th day of October, 1918, continuously rendered and still render him unable to follow any substantially gainful occupation, and the disabilities resulting from said disease and from said injury are of such a nature that they are reasonably certain to continue throughout the lifetime of the plaintiff; that by reason of said disabilities plaintiff is now and has been ever since the 17th day of October, 1918, totally and permanently disabled.

5.

That the plaintiff made application to the Veterans' Bureau and the director thereof and through the Bureau of War Risk Insurance and the director thereof, for the benefits of the War Risk Insurance Act for total permanent disability and the Veter-

ans' Bureau and the Bureau of War Risk Insurance and the directors thereof refused to pay the claimant the amount provided for total permanent disability and disputed the claim and right of the plaintiff to said benefits and have refused to grant the plaintiff said benefits under said Insurance Act.

6.

CONCLUSIONS OF LAW.

1st. That the defendant is indebted to the plaintiff in the sum of Fifty-seven Dollars and Fifty Cents (\$57.50) per month from and after the 17th day of October, 1918.

2d. That the plaintiff is entitled to judgment against the defendant herein. [195]

Respectfully submitted,

LOY J. MOLUMBY,
J. M. GAULT and
CHAS. DAVIDSON,
Attorneys for Plaintiff.

Thereafter, and on the 19th day of July 1923, defendant submitted and filed its objections to findings of fact requested by plaintiff and request for findings of fact heretofore requested by defendant, in words and figures following, to wit:

In the District Court of the United States, District of Montana, Great Falls Division.

HERBERT H. McGOVERN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

DEFENDANT'S OBJECTIONS TO FINDINGS OF FACT REQUESTED BY PLAINTIFF AND REQUEST FOR FINDINGS OF FACT HERETOFORE REQUESTED BY DEFENDANT.

Comes now the defendant and objects to plaintiff's requested findings of fact:

1.

Objected to as contrary to the evidence respecting residence of plaintiff.

2.

No objection.

3.

Objected to as ambiguous, indefinite, uncertain, misleading, and unsupported by, and contrary to, the evidence, in failing to fully state the facts, in this, that after a lapse of plaintiff's insurance, he made application for and the same was reinstated March 22, 1919, and that said insurance again lapsed on July 31, 1919. [196]

4.

Objected to as ambiguous, indefinite, uncertain, misleading, and unsupported by, and contrary to,

the evidence, in not specifying the character or nature of the disability of plaintiff, and further, as contrary to the evidence which is to the effect that plaintiff is not permanently and totally disabled, and if disabled at all, such disability results only from hysteria, a temporary and curable ailment, and it being established that such is of service origin and was acquired while the insurance of plaintiff was still in full force and effect.

5.

Objected to as ambiguous, indefinite, uncertain, misleading, and unsupported by, and contrary to, the evidence, in failing to set forth the character the nature of the disability of plaintiff, by virtue of which he claimed the benefits under his contract of insurance, and the kind and character of proof in support of his claim that was submitted to the Bureau, and on what date the same was submitted to show permanent and total disability, if any.

WHEREFORE, defendant renews the request heretofore made to the Court to adopt the findings of fact requested by defendant.

RONALD HIGGINS,
Assistant United States Attorney, District of Montana.

Thereafter, and on the 24th day of July, 1923, plaintiff submitted and filed his objections to defendant's requested findings of fact, in words and figures following, to wit:

In the District Court of the United States, in and
for the District of Montana, Great Falls Divi-
sion. [197]

HERBERT H. McGOVERN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

PLAINTIFF'S OBJECTIONS TO DEFEND-
ANT'S REQUESTED FINDINGS OF FACT.

Comes now the plaintiff in the above-entitled ac-
tion and objects to the defendant's requested find-
ings of fact as follows:

1.

No objections.

2.

No objections.

3.

No objections.

4.

No objections.

5.

No objections.

6.

Objected to on the grounds that it is a mere re-
cital of evidence offered by the defendant, which
evidence was in itself inadmissible constituting
nothing more than a mere self-serving declaration
on the part of the defendant through its agents and
is contrary to the weight of evidence introduced in-

asmuch as the defendant's rating themselves, show that plaintiff was rated totally disabled during all the time mentioned in defendant's requested finding of fact No. 6.

7.

Objected to on the grounds that the facts therein recited are immaterial and irrelevant in this case as the shortcomings of the defendant's [198] agents can in no way be pleaded as a defense in this action and the evidence clearly shows that the plaintiff was suffering from a nervous disorder prior to his discharge and ever since his discharge from the United States Navy and objected to on the further grounds that it is a mere recital of some of the evidence offered on behalf of the defendant which is contradicted by other evidence of greater weight offered by the defendants themselves as the ratings of the defendants, based upon the findings of fact of these other doctors clearly show that he was totally disabled during all the time mentioned in defendant's proposed findings of fact No. 7 and clearly shows that a mental and nervous disorder was part of the basis of those ratings.

8.

Objected to as being a mere recital of part of the evidence introduced on behalf of the defendant which is contradicted by other evidence offered on behalf of the defendant inasmuch as not less than two weeks thereafter the plaintiff was examined by doctors purporting to be experts on the subject, at the request of the defendant, who were in the employ of the defendant, whose testimony is before the

Court, and who found all the things Dr. Little failed to find. The shortcomings or lack of knowledge of Dr. Little cannot be the basis of a finding of fact which is contradicted by the defendant's own testimony.

9.

Objected to on the grounds that it is immaterial and irrelevant and is a mere recital of some of the evidence which is contradicted by the great weight of evidence introduced as the defendant's documentary evidence shows that plaintiff was totally and permanently disabled all the time recited in proposed finding of fact No. 9.

10.

Objected to on the grounds that it is contrary to the great weight of evidence in this testimony as the experts called on behalf of the defendant are doctors who never, in their life, examined the plaintiff or had an opportunity [199] to observe his condition, whereas the experts called on the part of the plaintiff and who are agents of the defendant and who are working for the defendant and who did have an opportunity to observe his condition daily for months, gave quite a different opinion.

11.

Objected to on the grounds that it is absolutely immaterial, as the medical rating schedule proved by the Director of the Veterans' Bureau, are in no way binding on this Court.

12.

Objected to on the grounds that it is absolutely immaterial as the findings of the director of the

Veterans' Bureau are in no way binding on this Court and has no evidential value whatsoever in this action.

13.

Objected to on the grounds that it is absolutely immaterial in that the findings of the director of the Veterans' Bureau are in no way binding on this Court and has no evidential value in this action whatsoever.

14.

Objected to on the grounds that it is absolutely immaterial inasmuch as this is not an action seeking to *mandamus* the director of the Veterans' Bureau but is an action brought under the War Risk Insurance Act.

15.

Objected to on the grounds that it is absolutely immaterial inasmuch as this is not an action seeking to *mandamus* the director of the Veterans' Bureau but is an action brought under the War Risk Insurance Act.

16.

Objected to on the grounds that it is absolutely contrary to the weight of evidence introduced at the trial of the action inasmuch as the documentary evidence offered as admissions on the part of the Government show that the defendant has been totally and permanently disabled ever since his discharge [200] from the United States Navy from a combination of disabilities, to wit, of tuberculosis and a nervous and mental disorder and because the great weight of testimony offered, not only at this

trial but also to the Veterans' Bureau, is to the same effect.

WHEREFORE, plaintiff renews his request heretofore made to this Court that they adopt the findings of fact heretofore requested by him.

Dated this the 21st day of July, 1923.

CHAS. DAVIDSON,
J. M. GAULT and
LOY J. MOLUMBY,
Attorneys for Plaintiff.

Thereafter, and on November 26, 1923, the decision of the Court was duly filed herein, in the words and figures following, to wit:

United States District Court, Montana.

No. 948.

McGOVERN

vs.

UNITED STATES.

DECISION.

This action is upon an insurance policy issued by defendant to plaintiff pursuant to Sec. 400, Act Oct. 6, 1917, 40 Stat. 409. Plaintiff alleges he is of total permanent disability within said statute. This, defendant denies, and pleads lapse of the policy in August, 1919, by reason of nonpayment of the premiums. A large part of the evidence consists of reports to the Bureau of War Risk Insurance and to its successor, the Veterans' Bureau, by defendant's doctors, repeatedly examining plaintiff

therefor, and of determinations and actions upon them by the Bureaus. These Bureaus are vested with statutory authority to examine, report, determine and act in all matters relating to administration of the statute whether in respect to its compensatory or insurance aspect, and hence all thereof are public, official, judgments of a special tribunal, and competent evidence. [201]

See *Evanston vs. Gunn*, 99 U. S. 666.

McQuerny vs. U. S., 143 Fed. 736.

That all thereof may have been more in relation to compensation than to insurance is immaterial; for the import of the term "total permanent disability," is like in both aspects. Incidentally, the Bureaus' determinations are not final, the statute, Sec. 405, providing that in event of disagreement between the Bureau and insured, action like this at bar may be brought. Therein, the whole matter is at large and open to contention, the proceeding in no sense a review of the Bureau's judgment. The statute prescribing no procedure, the rule as usual is that the action will be assimilated to like actions, here, against the United States, and so in accordance with the Tucker Act.

Again adverting to the evidence, it is that in 1917 plaintiff enlisted in defendant's navy and the policy issued. In June 1918, he entered defendant's hospital, was diagnosed as of chronic pulmonary tuberculosis and in October of that year, upon his insistence was discharged "by reason of physical disability incurred in line of duty." Intermittently for the greater part of near three

years thereafter he was treated in hospitals and sanitariums of defendant and others, and during this interval and thereafter occurred the examinations, reports, determinations and actions aforesaid. From these it appears in the main and with little dissent, that subsequent to the discharge plaintiff has given little evidence of tuberculosis, but has been and is subject to chronic bronchitis, fainting spells, extreme nervousness, hysteria, psychosis, maniac depressive, is of constitutional psychopathic inferiority with superimposed emotional irritability and paranoid trend, is unable to make social adjustment, is disabled to care for self, to follow his vocation of mining engineer or any other vocational training, and reasonably likely to be for an indefinite period. The Bureaus rated him variously from no disability to temporary total from discharge to May 1921 and perhaps later, and in March 1923 the Bureau's Board of Appeals rated him of disability "permanent total [202] on and after Oct. 10, 1922." Whether or not this last is or has become final, does not appear.

The other evidence is more or less corroborative of the foregoing, and tends to support the contention that at all times subsequent to discharge plaintiff has been and now is totally and permanently disabled. Some of defendant's witnesses, however, are of the view that this condition is not permanent in the sense that he may never recover from it, that it is largely due to hysteria and anxiety in respect to insurance and otherwise, and that this action decided he may recover. To guard against the

consequences of excitement, plaintiff was not present at the trial, and his testimony is presented by deposition subsequently taken. Of this, it is fair to observe it indicates average intelligence at least.

What constitutes total permanent disability within the statutory import of that term, by this Court has been indicated in Law's Case, 290 Fed. 975, and therein also the extreme and mistaken interpretation of the Veterans' Bureau. Adhering to the views of that case, it is believed that the facts and circumstances herein established that plaintiff's case is one of total permanent disability from his discharge thenceforward. This view is fortified by the Bureau's judgment. Despite its error of interpretation, practically from the beginning it has rated him of total disability; and as time passed, examinations repeated and condition unimproved, it at least indicates that its earlier determination of temporariness was mistaken and must yield to the logic of events and to a judgment that his total disability is permanent. With this, the Court agrees. As permanency of any condition (here, total disability) involves the element of time, the event of its continuance during the passage of time is competent and cogent evidence.

At no time since discharge has plaintiff possessed any substantial earning power, and at all said interval it has been and now is reasonably probable his status will thus long continue and for indefinite time. In other words, at all material time he has been and now is of total permanent disability within the [203] statute and Law's case. That

he may recover is based on the hypothesis that once this case ended, his hopes gratified or ended, his disability will likewise be ended; that then his diseased if not perverted mentality and will-power will be asserted to and will effect a cure and will restore the ability he now lacks. This consummation may follow, but that it will is fairly disputable and disputed, and is too conjectural to warrant a judgment that in reasonable probability it will. On the contrary, in all the circumstances the reasonable probability is that it will not, but if it does, only in some long, indefinite and incomputable time. Nonetheless is his disabled status permanent. If he recovers, his disability no longer total and permanent, he will no longer be entitled to insurance payments. That is the statute, sec. 402, 40 Stat. 409; sec. 404, 42 Stat. 155. Nevertheless, until that time arrives if ever, payments by virtue of the contract or policy are his due. The contingency happened and endures upon which they are to be made. It is immaterial that plaintiff's condition is probably due more to congenital defects and hysteria incited by weak yielding to desire for insurance payments, than to war service ailments.

The statute is not limited to disabilities due to war service, but includes any and all, so long as not intentionally self-inflicted. It is also immaterial that no premiums were paid after August, 1919. The policy did not lapse but had matured by reason of prior happening of the event, total

permanent disability. Premiums were no longer due.

Plaintiff is entitled to judgment and it is rendered as prayed, together with ten per cent for attorney fees.

Nov. 26, 1923.

BOURQUIN, J.

Thereafter, and on the 1st day of December, 1923, the Court made findings of fact and conclusions of law, by approving and adopting findings of fact and conclusions of law submitted by plaintiff on the 18th day of July, 1923, except for changes incorporated in paragraph 4 thereof, said findings and conclusions so adopted and approved by the Court, being in the words and figures following, to wit:
[204]

In the District Court of the State of Montana, in
and for the District of Montana.

HERBERT H. McGOVERN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF
LAW.

Comes now the plaintiff in the above-entitled action and respectfully requests the Court to make

the following findings of fact and conclusions of law in this action:

1.

That the plaintiff is now and has been for a period of more than five years prior to the institution of the action, a resident of the State of Montana, in the District of Montana.

2.

That on or about the 19th day of June, 1917, the plaintiff enlisted in the naval forces of the United States of America and that down to and including the 17th day of October, 1918, he served the Government of the United States of America as a first-class machinist in its navy and was during all of said time employed in active service during the war with Germany and its allies.

3.

That on or about the 5th of March, 1918, the plaintiff made application for insurance under the provisions of Article Four of the War Risk Insurance Act of Congress, in the sum of Ten Thousand; that he was duly issued a certificate of his compliance with said War Risk Insurance Act and that thereafter, during the term of his service in the United States Navy there was deducted from his pay, for said services by the United States Government, monthly premiums [205] upon said insurance and that said Insurance was in force and effect down to and including the 31st day of October, 1918.

4.

That during plaintiff's period of service with the

defendant during the war with Germany and its allies, and while acting in line of duty of such service, the plaintiff contracted a disability and suffered an injury which have ever since the 17th day of October, 1918, continuously rendered and still render him practically unable to follow any substantially gainful occupation to reasonable reward, and the disabilities resulting from said disease and from said injury are of such a nature that they are reasonably likely to continue for a long, incomputable and indefinite time; that by reason of said disabilities plaintiff is now and has been ever since the 17th day of October, 1918, totally and permanently disabled.

5.

That the plaintiff made application to the Veterans' Bureau and the Director thereof and through the Bureau of War Risk Insurance and the Director thereof, for the benefits of the War Risk Insurance Act for total permanent disability and the Veterans' Bureau and the Bureau of War Risk Insurance and the Directors thereof refused to pay the claimant the amount provided for total permanent disability and disputed the claim and right of the plaintiff to said benefits and have refused to grant the plaintiff said benefits under said Insurance Act.

6.

CONCLUSIONS OF LAW.

1st. That the defendant is indebted to the plaintiff in the sum of Fifty-seven Dollars and Fifty

cents (\$57.50) per month from and after the 17th day of October, 1918.

2d. That the plaintiff is entitled to Judgment against the defendant herein. [206]

Respectfully submitted,

LOY J. MOLUMBY,

J. M. GAULT,

CHAS. DAVIDSON,

Attorney for the Plaintiff.

Approved, adopted and made December 1, 1923.

BOURQUIN, J.

ORDER SETTLING AND ALLOWING BILL OF EXCEPTIONS.

AND NOW, in furtherance of justice, and that right may be done, the defendant, the United States of America, tenders and presents the foregoing as its bill of exceptions in this case to the action of the Court, and prays that the same may be settled and allowed, and signed and sealed by the court and made a part of the records and the same is accordingly done this 7th day of Feb. 1924.

BOURQUIN,

Judge of the District Court of the United States for the District of Montana. [207]

Service of the foregoing bill of exceptions acknowledged and copy received this — day of January, 1924.

_____,
_____,

Attorneys for Plaintiff.

Received by the clerk for delivery to the Court
this — day of January, 1924.

Clerk of the United States District Court for the
District of Montana.

Filed this — day of January, 1924.

Clerk of the United States District Court for the
District of Montana.

Filed Feb. 7, 1924. C. R. Garlow, Clerk.

Thereafter, and on February 14, 1924, praecipe
for transcript of record was filed herein, being in
the words and figures following, to wit: [208]

In the District Court of the United States, District
of Montana, Great Falls Division.

UNITED STATES OF AMERICA,
Plaintiff in Error,
vs.

HERBERT McGOVERN,
Defendant in Error.

PRAECIPE FOR TRANSCRIPT OF RECORD.
To the Clerk of the Above-entitled Court:

You are hereby requested to make a transcript
of the record to be filed in the United States Circuit
Court of Appeals for the Ninth Circuit, pursuant
to a writ of error allowed in the above-entitled
cause, and to incorporate in such transcript of rec-
ord, the following papers, to wit:

1. Amended complaint.
2. Summons.
3. Answer to amended complaint.
4. Motion for judgment by defendant.
5. Judgment.
6. Bill of exceptions.
7. Petition for writ of error.
8. Assignment of errors.
9. Order allowing writ of error.
10. Writ of error.
11. Citation on writ of error.
12. Copy of praecipe for transcript.
13. Acknowledgment by defendant in error of service of all papers on writ of error. [209]
14. Any other file, paper or assignment required to be incorporated in a transcript of the record herein, under the practice of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 12th day of February, 1924.

JOHN L. SLATTERY,
United States Attorney,
RONALD HIGGINS,
W. H. MEIGS,

Assistant United States Attorneys,
Attorneys for Plaintiff in Error.

Service accepted this 12th day of February, 1924.

LOY J. MOLUMBY and
CHAS. DAVIDSON,
Attorneys for Defendant in Error.

Filed Feb. 14, 1924. C. R. Garlow, Clerk. By
H. H. Walker, Deputy. [210]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
District of Montana,—ss.

I, C. R. Garlow, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of two hundred and ten pages, numbered consecutively from one to 210, inclusive, is a full, true and correct transcript of the record and proceedings in said cause, and of the whole thereof, required to be incorporated therein by praecipe filed, as appears from the original records and files in said court, in my custody, as such clerk; and I do further certify and return that I have annexed to said transcript and included within said pages, the original citation and writ of error issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of Ninety-two and no/100 (\$92.00) Dollars, and have been made a charge against the United States.

WITNESS my hand and the seal of said court this 21st day of February, A. D. 1924.

[Seal] C. R. GARLOW,
Clerk, United States District Court, District of
Montana.

By H. H. Walker,
Deputy. [211]

[Endorsed]: No. 4202. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Plaintiff in Error, vs. Herbert H. McGovern, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Montana,

Filed February 25, 1924.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

